



A
T R E A T I S E
O F T H E
Exchequer and Revenue
O F
I R E L A N D.



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T R E A T I S E

OF THE

Excise and Revenue

OF
I R E L A N D.

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T R E A T I S E
O F T H E
Exchequer and Revenue
O F
I R E L A N D.

By G. E. HOWARD, Esq.

MOST HUMBL Y INSCRIBED,
To the TREASURER, CHANCELLOR, LORD
CHIEF BARON, and the Rest of the BARONS
of the COURT of EXCHEQUER.

IN TWO VOLUMES.

V O L. I.

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PREFACE.

P R E F A C E.

MY only intention, at first, in collecting and composing the following work was for my own private instruction and use; for in the year 1743, having been appointed *attorney for the King's rents in the Exchequer*, as I was in the course of six or seven years more to others of those offices which I still hold in the several legal departments of the revenue *, I very soon perceived that the due and proper execution of them required an accurate knowledge of several matters of which I then was totally ignorant, and with which but very few were acquainted; as the *acts of settlement and explanation on the rebellion in*

* And have been lately appointed Solicitor to the commissioners of the revenue.

this kingdom in 1641, and the proceedings thereon; the *trustee act* and the several after *acts* on the subsequent *rebellion* in 1688, and the proceedings also thereon; several branches of the revenue of this kingdom, with the institution and constitution thereof, and the changes therein; as also of the several offices where the several records and archives relating thereto were to be found.

And being extremely uneasy in this state of ignorance of the several businesses in which it was fit I should be knowing, I immediately set about examining all the books and records in the several public offices of the kingdom for upwards of one hundred years before, which were in any sort conversant with the Exchequer and Revenue of Ireland; and some of the gentlemen who had been for a considerable time deputies in the said offices, having not only freely communicated to me every intelligence I requested of them, but also furnished me with copies of all such extracts, minutes, &c. as they had themselves taken, or were in their possession, relating to the matters which they found I was collecting. What with these, and the innumerable copies and extracts which I had myself taken, together with the many

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many special cases which happened in the court of Exchequer here, relating to my several departments in the revenue, in the long course of three and thirty years experience, and which I likewise had from time to time collected; as also many special cases from English authorities; the whole was at length swelled to no less a bulk in the manuscript, than four very large folio volumes*.

But as several arduous matters, not only in the common law, but also of the constitution, (as I may say) of this kingdom, far above my readings and knowledge, were dispersed through the whole, as I had collected them from various treatises on

* This enquiry brought to my recollection an irreparable loss to the public, of which I myself had knowledge: Dudley Loftus, esq; who had exercised some high offices in this kingdom for many years during the reign of King Charles Ist, and the successive Kings, Charles IId, and James IId, a gentleman of great abilities and learning, having made collections of several important matters relative to the aforesaid *acts of settlement and explanation*, as also to the rebellion in the year 1688, in several manuscript volumes, they fell into the hands of my mother, who was a descendant from him, and she having married a gentleman in the army, and they not knowing the value of them, the whole, except one volume, was used as waste paper upon all occasions in the house; however, in this one only volume which happened to escape, there were a few curious matters relative to the aforesaid *acts of settlement and explanation*, which are inserted in the following work.

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these subjects, it never was my intention to presume to commit them to the view of the public, until several gentlemen, not only of eminence, but of high station in the law, having at different times, within the period of time I have mentioned, not only in part perused them, but got several extracts from them, pressed me to do so.

This, at my time of life, but chiefly for the other reasons I have mentioned, I could not think of myself to attempt, but thereupon immediately offered to let the public have the work, if any gentleman of the bar, of sufficient ability, would give his time and labour to the examination of so voluminous a collection, and the innumerable authorities from which a considerable part of it had been collected, and in reducing the huge and indigested mass to such a degree of method and order as might render it fit for the eye of the publick; and accordingly for that purpose, I deposited the four manuscript volumes at the book stall in the hall of the four courts, where they remained for about nine months for the inspection of all such gentlemen of the profession, and others, as were inclined to peruse them.

In

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In some time after, counsellor Charles O'Neill, whose learning, knowledge, and abilities, in his profession are so universally known, that to expatiate on them here would be entirely needless, (after offers had been made by others who were speedily deterred from the attempt by the labour and difficulty which it was conceived would attend it) of his own accord, most kindly undertook to fit the work for the press; and although it has greatly interfered with the business which his merit has so justly procured him, and of course his emoluments and profits thereby, yet he hath still persevered; wherefore, whatever approbation this production (of which there never has been any thing of the sort before in this kingdom, to which it is peculiar) may meet with, to him, in a very great degree, the honour is due. I did think it would have made two folio volumes in print, but abundance has been omitted which he, from his very far superior knowledge and judgment, conceived had not sufficient authority to support it.

At the same time I must observe to my readers, that had I met with the same indulgence from some few other persons in office, to whom, at
the

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the time I have mentioned, I applied for instruction and materials, as I did from those by whom I had been favoured as aforesaid, the work might have been advantaged; but I not only met with refusals, but a surprizing ignorance, not only of the businesses of their offices, but even of records being in their possession, which I knew to be there, and which from my enquiries they afterwards found to be so. One would not let me take extracts without the order of government; another conceived it would be disclosing the arcana or secrets of office, and this even in matters which it would be a public advantage, as well that every man should be acquainted with, as to inform the officers themselves, and their successors. It is otherwise in England: and that the matters or business of any public office (save those immediately connected with the state, where secrecy may be absolutely necessary) should be concealed from the publick, seems nearly a paradox.

Wherefore, I cannot help lamenting here, as I have often done before, that there are not more public officers in this kingdom who are less attentive to the emoluments than to the knowledge of the business of their offices; and that skill, abilities,

abilities, and true merit, hath at times been so little considered in promotions to offices; and that the office had been ever sought out for the man, and not the man for the office. But of this I am fully convinced, that had the contrary been the practice in the revenue, and that the several officers employed therein, especially in the excise, had been raised from one department to another, for their approved good conduct only, there would have been an exertion in all, not only in the doing of their duty, but to excel; and the increased produce of the several revenues of the kingdom would at this day have been such, that not one half of the additional duties which are now in being, might at this day have been wanted. But where the salaries of offices are but small, (the most of them being the same as they were when one pound sterling of money would purchase as much of the provisions of life as three will now,) and that ignorance, indolence, or demerit, should be preferred to and have the superintendency of knowledge, (which comes not by inspiration) integrity, and activity, than which, in the common transactions of life, there is not any thing more mortifying, if the poor dispirited, injured officer should in such case continue to be honest, and merely execute his office, is it not

as much as may in reason be expected of him? I have often heard Sir Richard Cox, that very able revenue officer, who died a commissioner, say, that more than one third of the revenue of excise of this kingdom was not then collected, which might have been collected, and that much was owing to this grievance, which for many years before the time he mentioned this, had been the common practice in the revenue.

If ever there was a likelihood of a thorough reformation in this way, I think I may with confidence say, it is in the present administration of this kingdom; where the most intelligent, worthy, generous, and accomplished nobleman, who presides in it, hath hitherto been (it is well known) as industrious to make himself acquainted with the constitution and business of the kingdom, as he is to seek for, and reward the deserving; and if not impeded by some of those illusive spirits, (who, in this, as it is in another kingdom, under the alluring shew of patriotism, or from a *little* itch for popularity, a vice the instant it is sought, and is below the noble mind, are its greatest enemies) would contribute cheerfully to make it speedily a very flourishing one.

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The produce of the *casual revenue* also, might beyond all doubt be improved several thousands a year, and the execution of the public justice of the kingdom (the far more material consideration) at the same time forwarded greatly. This revenue arises chiefly from forfeited recognizances acknowledged for the appearance and prosecution of persons guilty of breaches of the peace in outrages and violences of every kind; as also of fines and amerciaments, imposed by the several courts of justice in the kingdom, on their officers and others for neglect or breach of duty in the execution of justice, and for other offences.

Which recognizances, fines, &c. being estreated twice a year into the Exchequer, are issued thence twice also in the year, in the three several processes, commonly called the process of *green wax*; the first, according to *magna charta*, against goods only; the second against body, goods, and lands; and third against them also, and against heirs, executors, and administrators, (a full account of which is in this work) and directed and sent to the several sheriffs of the kingdom, in order to levy the several sums therein, for which they are to account in the Exchequer, after they are out of office, at certain times prescribed by law for the purpose.

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Now, were the attention paid to this very important department of the police of the kingdom, which, to promote its execution, ought to be paid to it, by those who are concerned in the several stages thereof, besides increasing the casual revenue very considerably, it would be a principal means of promoting that due, that absolutely necessary obedience to the laws, which is so much wanting in this kingdom, and of course contribute greatly to the prevention of the many riots and violences of every kind, for which it is at present noted above all the other nations in Europe; not one in twenty of which would happen, were it not for the ignorance of some, the neglect or misconduct of others, and, I much fear, the corruption of several among those who are employed in the conduct of this business, as I think I can prove to an absolute demonstration.

For the purpose, the evil originates often, indeed too often, with the justice of the peace; who, being informed, either upon the *Examination* of the person injured, or the *Information* of some other, of some outrage committed against the peace of society, perhaps neglects to take down the place of abode, occupation, or other addition, of the *Informant* or *Examinant*, by which they

they may be afterwards found, either in the examination, information, or recognizances, to appear and prosecute; and if the offender happen to be brought before him, and that sureties are taken for his appearance, not only the same neglect or omission is committed, but persons taken as such sureties, who are neither of credit, substance, or known residence, how flagrant or outrageous soever the offence may have been.

Then, let the justices of the peace be ever so careful in these matters, and of transacting them properly, and that such additions of occupation, place of abode, &c. to ascertain the persons, shall have been inserted in their recognizances, yet, when these recognizances, either at the assizes, or at the quarter sessions, are on default of appearance or prosecution, ordered to be estreated, the several clerks of the Crown and peace of the kingdom (who are very material officers in this (I must again repeat it) most important business, and have it much in their power to promote or defeat it, neglect or omit to insert those additions in the estreats which are to be returned into the Exchequer, notwithstanding the rule of the court of the 22d of June, 1772, for the purpose. So likewise the same neglects or omissions are com-

mitted by these officers, where fines are imposed on transgressors and defaulters, not only at the assizes and sessions, but also in superior courts of record, commissions of oyer and terminer, &c. Nor is this all; many of these fines and forfeited recognizances, from favour, affection, party, partiality, or other improper consideration, are either not entered in the books of these officers, or, if entered, not extracted therefrom, or inserted in their estreats; and often these estreats are never returned.

But when these estreats have been returned to the court of Exchequer, they are issued in process to the several sheriffs of the kingdom, (as is before mentioned) to whom they are to be delivered by the pursuivant of the court, after he has received them from the several other officers thereof, whose business it is to deliver them to him, and for all which transactions certain stated times are appointed by rules of the court, that the sheriff may have sufficient opportunity, before the returns in the process expire, for the execution thereof, which has often happened otherwise, through the neglect or default, or other misbehaviour, of the pursuivant.

Now,

Now, by the stat. 12 Geo. I. c. 4. sheriffs shall have an allowance upon these accounts of 12d. out of every 20s. for every sum not exceeding 100l. and 6d. for every 20s. over and above the first 100l. of all money (except post fines) which they shall levy on the aforesaid process of the pipe or green wax process; but this allowance is so greatly inadequate to the trouble and expence which must of course attend the collection of such a number of sums from such a number of persons, many of them wretchedly poor, and dispersed through the whole county, that the high sheriff leaves the whole transacting of this business to his sub-sheriff, who generally delivers the process to the sheriff's bailiffs to be executed, who are usually of the lowest of the people, and are not sworn to the execution thereof; so that, perhaps, out of one thousand persons which may be in one of these processes, it frequently happens that a sheriff, on his appraisal in the Exchequer, may not account for ten of the sums therein, (except custodiam rents and post fines, in which cases only the court will not receive such a return, as the lands charged therewith cannot but be known, and the sums of course be levied therefrom) but on the contrary, positively

positively swear, on the return of the bailiffs to them, that perhaps 950 persons of the one thousand have not either bodies, goods, or lands, in his county, although such persons must, in the case of recognizances, have appeared before the magistrates who took the same; as also (frequently) in the case of fines in the courts, where they were imposed; by which whole series of misconduct, this most important and very expensive process of justice is rendered almost totally fruitless, and his Majesty's casual revenue is considerably injured, to the real loss of the public.

*Quid tristes querimoniae
 Si non supplicio culpa reciditur?
 Quid leges sine moribus,
 Vanae proficiunt?*

HOR. lib. 3. Od. 24.

*But wherefore do we thus complain,
 If justice wears her awful sword in vain?
 And what are laws unless obey'd
 By the same moral virtues they were made?*

FRANCIS.

But now the question may reasonably be, what are the remedies for all these inconveniencies and mischiefs?

In

In the first place then, it is proposed, that by a law to be made for the purpose, no person shall hereafter be appointed a justice of the peace in any county of the kingdom, who hath not an estate of inheritance, or other freehold, or profit rent on leasehold interests, in the same county, of at least 300l. a year, except any number not so qualified, not exceeding four at a time, for the county of Dublin, to be approved of and appointed according to the present method for that purpose, and that they only be appointed who are most noted for their abilities, wisdom, and integrity. As to their qualifications, see 1 Ed. III. stat. 2. c. 16. Eng. 34 Ed. III. c. 1. Eng. 13 Ric. II. stat. 1. c. 7. Eng. 2 Hen. V. stat. 2. c. 1. Eng. and 18 Hen. VI. c. 11. Eng. none of which have been repealed, and are of force in Ireland.

And as by several statutes, also, many offences are appointed to be tried by the justices of the peace of the several counties of the kingdom, at their quarterly sessions, as if the same were regularly and properly held, suppose a law should be made for the more regular and effectual holding of these sessions, and for punishing by fine, or removal,

removal, such of the said justices as should absent themselves therefrom, without sufficient excuse; as this would be a certain means of ridding the justices of assize and goal-delivery of a considerable part of that trouble which they have in the trials of inferior, petty offences, the undoubted duty of the justices of the peace, but which at present is almost totally and shamefully neglected by them, and enable the judges of assize the more effectually to transact the more material business of the country, as it would at the same time prevent that much to be lamented loss of time of the labourers of the country, who are too much disposed to be wantonly idle, in attending the assizes several days, at the material seasons in the year of ploughing, sowing, and reaping, besides the cost and expences they are at, most heavy to them. As to the powers of the peace justices, see the before-mentioned stat. 34 Ed. III. c. 1. Eng. 36 Ed. III. c. 12. Eng. 2 Hen. V. stat. 1. c. 4. Eng. and 4 Hen. 7. c. 12. Eng. none also of which have been repealed, and are likewise all of force in Ireland.

To reduce, then, all these statutes into one sufficient and effectual act, for the regulation of this most important office, and to empower the
justices

justices of the peace also, at their quarterly sessions, to try and finally determine all demands or actions whatever, not exceeding 40s. value; and for that purpose, and for the accommodation and ease of themselves, and the other inhabitants of the county, to hold each quarterly session at a different town in the county, and four of the principal ones to be fixed for that purpose; and to have the same fees upon all such actions as are now paid in suits in civil bills; I am convinced I may venture to pronounce with certainty, that after a very few years perseverance in these matters, as also in a cautious taking and due and faithful returning of recognizances, (than which there is not any part of the business more material) together with the necessary assistance of a properly appointed and well regulated office of sheriff and its under officers, such an appellation as a White boy, an Oak boy, or an Heart of Steel, would not be heard of in a county in the kingdom; and that good order, peace, industry, and prosperity, would be established on a sure and permanent foundation in all. In England, although this office is not attended to or executed as it was formerly, and as it ought to be, yet it is far better there than it is here. That justices of the peace may (as well as sheriffs, clerks of the

Crown and peace, and others) be punished for their neglects or misconduct in this business, by fines imposed on them by the court of Exchequer, there have been instances; or the chancellor may supersede the commission and remove the persons so charged from the office, upon the matter being properly laid before him by the Barons of the Exchequer; but it is far better to prevent a mischief than to have occasion to punish the offender.

The officer next in order, to be considered, and a very principal one in the conduct of this business, is the sheriff of the county: he is (as has been just mentioned) the collector of this branch, as he formerly was of all others of his Majesty's revenue, and as such is entrusted with the execution of the green wax process; and on his fidelity and diligence therein depends in a great measure the advantage which is to arise therefrom to the publick, in the preservation and security of the peace and happiness of society, and the improvement of this branch of the King's revenue, which for the benefit of the publick, is applied in aid of other revenues to defray its expences.

Wherefore,

Wherefore, it is to be wished that none but the principal gentlemen of the first reputation and credit, with sufficient estate, (at the least 500l. a year) in the several counties in the kingdom, were to be appointed to this office of dignity, trust, and authority; upon the due and proper execution of which, the property, the life, and the liberty of every individual, and the peace and safety of the whole, abundantly depend, and for the defence of all which it was beyond all doubt originally instituted, as may appear by the many excellent laws which have heretofore from time to time been made for the appointment, qualifications, and powers of this great officer; such as Artic. super chart. 28 Ed. I. c. 8 & 13. Eng. 9 Ed. II. st. 2. Eng. 2 Ed. III. c. 4. Eng. 4 Ed. III. c. 9. Eng. 5 Ed. III. c. 4. Eng. 14 Ed. III. c. 17. Eng. and 12 Ric. II. c. 2. But the high importance of this office will best appear from a relation of some of the essential businesses with the execution of which this officer is entrusted, for the advantage of the community.

Does he not, then, return the juries who are to try our lives, our properties, our liberties? And if in this he is corrupt, would not this main

pillar of our freedom, this most valuable blessing, (which of all the people on the globe they of our glorious constitution only enjoy) be as tho' we had it not? Is it not by this officer that our laws are to be finally executed? And if in this he is corrupt, (which from men of scanty circumstances, or small reputation, there is but too much reason to fear might be the case) would our laws be then any other than a mere dead letter, to the utter destruction of credit and commerce? But above all, is the high trust which is reposed in him on elections of members for the legislature; on his conduct in which, our glorious constitution chiefly depends *.

At the same time I must observe, that if any proceedings have happened in the appointment

* To such a pitch is the abuse of this very essential office at present arrived, that it is twenty to one if a writ be executed in any of the distant counties of the kingdom; or if it be that the plaintiff is not by the iniquity of an under-sheriff kept from the benefit of it until he is more wearied in seeking it from this subordinate minister of justice than he was from his original debtor, to the almost entire destruction of credit; which verifies what has been said of our constitution, "that we of all civilized nations have the best framed, but worst executed laws." Nor is the Crown's revenue, such part as the sheriffs collect, as aforesaid, more easily got out of their hands.

to

to this office, in the least degree inconsistent with the aforesaid several statutes, or with the strictest adherence to the established principles of our constitution therein, it must in this case have arisen (as it is well known it did on the Excise law,) from an absolute necessity, and from this unaccountable mistake, that the interest of the Crown and that of the people can, in the true and real sense of the matter, in our constitution, possibly be inconsistent; from which it has often been as difficult to get sheriffs to return jurymen where the Crown has been concerned against the subject, who were not biased in favour of the latter, as it was also to get jurymen who were not so biased where sheriffs were really impartial; wherefore, the complaints of grievances, which, it is alleged, have arisen to the publick upon these occasions, are in the general bellowed out by those, who, too often, from their own improper proceedings, have been the cause of any alteration, or change, which may have been in the proceedings in either of the two departments I have mentioned*.

But

* The method which has been for many years of appointing sheriffs is thus: The judges of assize, on their summer circuits, require the sheriffs in office in the several counties in the kingdom, each of them, to return them the names of three persons in each county

But to return, if sheriffs upon the execution of this process, instead of 12d. which is all they are now allowed on their accounts, as aforesaid, out of every 20s. for every sum not exceeding 100l. were to be allowed 5s. and instead of 6d. for every 20s. over and above the first 100l. to be allowed 2s. 6d. for all money, (except post fines and custodiam rents, in which last cases to be allowed 6d. in the pound only) it has been conceived, it would speedily have that most salutary and much to be wished-for consequence, of greatly securing and preserving the safety and peace of society, as the persons fined or mulcted in this process could not then afford to tamper with the under officers employed by the sheriffs in the execution thereof; which process in many parts of the kingdom are, for the reasons I have herein mentioned, absolutely held in contempt;

county proper to succeed them, which they accordingly do; and at the meeting of the judges in the chancellor's chamber on the morrow of *All Souls* in the following *Michaelmas term*, the lord chancellor calls on them for their returns, which, when received, he delivers to the lord lieutenant, who *appoints* one for each county out of each return. But note, the judges have a power before they make their returns to alter the persons, or any of them, in their discretion. All which is a good deal agreeable to the aforesaid stat. 12 Ric. II. c. 2. But see Blackst. vol. I. 339, &c.

so that our laws are quite useless, mere *bruta fulmina et vana*, besides the loss of several thousands a year to the casual revenue; for even after the allowance of this large poundage to sheriffs, the encrease to this revenue would be considerable from the collection of innumerable sums which in all likelihood, for the reasons before mentioned, might never have happened. What induced the lords to reject the bill for this purpose, the last session, after it had been approved of in all the other stages through which it had passed, is hard to conceive, unless it was occasioned by a few mistakes that were in it, which had been introduced in some alterations which had been made in the original draft, which was prepared by me.

At the same time, the judges, who have the discretionary power of imposing fines for offences *unaffeced per pares*, are ever to bear it in mind, that in an British constitution, an absolute necessity only can warrant it; and that of whatever benefit the *use* of it may be to the publick, in the ways I have mentioned, yet, that its *abuse* might cause us to wish it had never existed. To consider also, that no plea can be to the Estreat of a fine which is not first laid before the *court of Exchequer* for their permission. The recogni-
zances

zances stand upon a different footing, they are acknowledged by the parties thereto.

Besides, as to this office of sheriff, this most important as laborious office, for the service of the publick, it is a matter well known, that what from the expence which sheriffs are at in the passing of their patents, the heavy charges on them in several of the offices of the Exchequer on passing their accounts, but above all on reducing of fines, which have been imposed on them by the court, for the neglects, defaults, or other misbehaviour, or misconduct, of the under officers, which they must of necessity employ, and chiefly in this business of the green wax process, they are, in the general, considerable losers by the office; and that not only they themselves, but their families after them, have often been involved in the most distressing difficulties.

Even the indulgence they receive in the length of time which is allowed them by the court *to account, to pay their tots, and to clear their accounts*, (the three stages through which they are to pass in order to be discharged and obtain a quietus,) being at least double what it was formerly, as will appear by the books in the treasurer's

treasurer's remembrancer's office, (which alteration, and the mistake on which it is founded, is fully set forth in the following work) whereby, before the sheriffs are compelled to account, their sub-sheriffs and their sureties may be rotten in their graves.

It has been the opinion of several of the first in knowledge in this branch of the revenue, that the present course of the process of green wax might be abundantly abridged; or that one well-ordered writ might do instead of the three which now issue, whereby a prodigious expence would be saved to the Crown, as also very great labour and loss to the sheriffs of the kingdom, and much benefit gained to the publick: whereas, by the present course, the *Pipe*, or second process, without any colour of reason, and against a standing rule of the court (23 Nov. 1685) to the contrary, issues twice; and then the *Treasurer's remembrancer's process*, with the *Prerogative writ*, also called the *long writ*, annexed thereto, which, although it be against every thing, body, goods, lands, heirs, executors, and administrators, and an *Inquiry to be beld thereon*, yet is rather less effective than any of the others; nor is it to be wondered at, from the manner in

which it is executed, which is thus; the sheriff in some little town or village in the county, perhaps in a cabin on the road, where twelve of the lowest of the people, his bailiffs and others his creatures, are the jury, and a general inquisition returned of neither body, goods, lands, heirs, executors, or administrators in the whole county, as to every person contained in the process, although by a standing rule of the court (14th May, 1717,) the inquiry on this writ is to be held in every barony in the county; so that in a course of thirty years, for which period I have been Solicitor for the casual revenue, I have not seen as many sums brought in thereby; and the same nugatory proceedings have been of late upon the Pipe process. But as all these matters may be the better judged of from the whole of the proceedings, which are in the following work, with my occasional observations thereon, I shall refer my readers thereto.

Others have thought, that it might answer the purposed ends much better, if the present mode of collecting the casual revenue was to be changed, as that of the other revenues hath been, by transferring it to the several collectors of Excise in the several districts in the kingdom instead of the sheriffs,

sheriffs, with good allowance on collection, but not by salary; and especially as the books of the hearth-money collectors would be of singular use therein, by which the places of residence of the inhabitants of every county, who pay hearth-money, might easily be known: besides, copies of the summoner's process are sent out twice in every year, to wit, in Hilary and Trinity vacations, by the Solicitor for the casual revenue * to the several collectors of the kingdom, to enquire of the several persons therein, and of their personal effects, and to make return thereof to him, or to the commissioners of the revenue, that he may therefrom be enabled to cheque the several sheriffs on their accounts upon this process; so that they have already a considerable part of the trouble which they would have, were

* He is by this office superintendent of every other person concerned in the business of this branch of the revenue; and should therefore with the greatest attention and diligence pursue the *Instructions* he receives with his commission. This Office, it is to be observed, was formerly held with that of the *Clerk of the Informations in Dublin port*, under the same commission, which was worded as if the businesses of both were connected; whereas, no two in the revenue are more foreign to each other; and they were also held by persons ignorant of the law, whereas attorneys only are the persons proper to conduct them, as the aforesaid *Instructions* for both, (which are blended, but may be easily separated, and annexed so to the commission for each,) will fully evince.

they to be the collectors of this branch of the revenue. It is a matter very worthy of consideration, and would require the maturest. That it would deprive several officers of the Exchequer of large fees and profits, which they make by this branch of the revenue, and by the accounts of sheriffs, is most certain; but this is a matter, which, if put in competition with the advantage of the publick, is scarcely worth a thought, as they may be recompensed by the publick, and especially as by the present mode of proceeding, a large expence is incurred with but little profit to the publick, whereas the advantages to it would be exceeding great were this business properly conducted.

The clerks of the Crown and peace, as well as the justices of the peace of the kingdom, have it equally in their power to promote, as to postpone, or defeat the execution of its publick justice, as also to improve, or reduce the income of the casual revenue. For instance, if justices of the peace would be careful in not suffering any person to become sureties for the appearance of persons charged with offences, but such as are of some degree of credit and substance, and known residence; if they would insert in the recognizances
which

which they take, the places of abode and occupations of such, as it will appear by the following work they are bound to do, or may be fined, nay, removed; if the clerks of the Crown and peace also would be as careful to do the like in their Estreats, which they return to the Exchequer, and as punctual in the returning thereof as they are also bound, under the like penalties, to do; if on all fines hereafter to be imposed in any of his Majesty's courts of record in Dublin, or elsewhere, commissions of oyer and terminer, as also at the assizes or sessions, and other courts, where fines or amerciaments are usually laid or imposed, the several clerks of the Crown and peace, or other proper officer, would immediately enter down the additions and places of abode of the person or persons so fined, (all which requisites the said several officers also, by the rules of the court, as will appear by this work, are bound to perform) and that the judges of assize would themselves compare the Estreats with their own private court-books, which they should ever keep as a check upon those of the clerks of the Crown, and in which they should be most careful to enter every forfeiture and every fine they impose, in order to prevent the grossest offenders (from any interest or improper influence,

as

as has been often the case) from escaping the punishment they justly deserve; and to see that true and faithful returns are made thereof, or else this most important and expensive process must become a perfect nullity.

Then, the offices of clerk of the Crown and peace are usually in the same grant, through the whole kingdom, so that the deputation of the latter is as usually purchased or farmed; the probable consequential evils of which are so glaring, it were needless to suggest them: wherefore, it has been conceived, it would be better for the publick if the offices were to be separated.

But there is another matter which also is most worthy of attention. In England, by several statutes there, 37 Hen. VIII. c. 1. 3 & 4 Ed. VI. c. 1. and 1 Will. & Ma. stat. 1. c. 21, the *custodes rotulorum* there have a power of appointing clerks of the peace, yet notwithstanding that these offices, in this kingdom, are by the King's grants, and that there is no such statute here, yet several lords lieutenant of counties (as they are here called) have taken on them to appoint to this office of clerk of the peace, which is not only most injurious to the legal patentee, (who is generally the

the purchaser thereof) but also of much mischief to the publick.

Then again, there are several corporate cities and towns in this kingdom to whose corporations, all the fines, ransoms, and amerciaments, for all crimes and trespasses within such cities and their precincts, and all recognizances, penalties, and forfeitures, of all the citizens and inhabitants therein, are granted; who therefore have conceived that the clerks of the Crown and peace, of their jurisdictions, are exempted from returning the estreats thereof to the court of Exchequer, and orders of the court have been inconsiderately (I believe) conceived to that purpose. But the better opinions seem to be, that these fines, &c. ought to be estreated for the sake of publick justice, as also of the party on whom they were imposed, who if he conceives they were illegally or improperly imposed, may, on application to the court, be admitted to plead to the estreat thereof, or they may be reduced, if foundation for favour should appear to the court, and partial proceedings prevented, where these indulgent grants are given.

And

And surely also, never did a fairer opportunity offer than in the present administration, to petition for some law to restrain the daily practised abuses and consequential grievous mischiefs which attend the *obtaining custodiams upon outlawries in civil actions between party and party*; which are injuring every day more and more the common securities of the kingdom, and destroying its credit; and all this most absurdly under the fiction of the prerogative of the Crown, which is no more really concerned therein (as I have before mentioned in the preface to my treatise on the Pleas-side of the Exchequer, to which my readers are referred) than is the prerogative of a *Nabob of India*; yet, were it so, it was even said by King Charles I. (who fell a sacrifice to his zeal for what he thought the prerogatives of the Crown, and the rage of fanatics) in his answer to the petition of rights, in the third year of his reign; “That his prerogative was to defend the rights and liberties of the subject, as were the rights of the subject to strengthen his prerogative.” Will any person, then, be hardy enough to say, that this prerogative should ever be in fiction used to injure those rights? And would not such a proceeding be rather an injury than an advantage to the prerogative? And is it not an offence

offence to our virtuous, pious Sovereign, whose benign heart, I am convinced, it would grieve, were he to be apprized of the unfit use which is so frequently made of his royal prerogative. But as I have in my said former preface endeavoured to set forth the whole of the very improper, nay, unjust proceedings on this process, I shall only sum up here the many grievances which are the sure attendants thereon; nor should I have repeated any of them, but that they more properly belong to the following work, as also the more strongly to inculcate them on the minds of those who may procure the redress.

This process, then, which is against body, goods, and lands, (and by which the unfortunate person against whom it issues is proclaimed a contemnor of the laws, a rebel, and a fugitive, although not served with any process, summons, or previous notice thereof whatever, and is visible every day) may be issued for the smallest sums, for an uncertain, nay, for a fictitious sum, (as is often the case) for neither bond, judgment, note, affidavit, or other voucher is produced, or even required, as it is in every other case, as a foundation for this violent proceeding; and yet it shall have preference to, and take place of every

other process in the law, even in cases where the most solid security has been given.

The dowered and the jointured widow, the purchaser, the judgment creditor, the mortgagee, unless he be in the actual receipt of the rents *, and the every other real, fair incumbrancer, are often without the least notice (for almost the whole proceedings are, as I have set forth in my said preface, as clandestine as they are injurious) stripped of their securities, put to great, to grievous trouble, and to most unjustifiable expence, the cost having been often many times more than even the fictitious sum ; the *before*. miserable tenants of the estate eternally harassed, until driven to emigrate. The landlord, should it be a derivative interest which is attached on this process, rendered incapable of bringing an Ejectment for non-payment of rent without the permission of the Exchequer, on a motion to be made by his counsel ; (which permission even cannot be applied for, without the consent of the Attorney general, as guardian of his Majesty's prerogatives, to be

* But quære, If the mortgagee be not in the actual possession, on default of payment of the money on the day appointed by the deed, and if the mortgagor be not thereby absolutely tenant to the mortgagee for the lands.

previously had for the purpose) whereas, this unfortunate landlord may have no more to say to the debt or demand than an inhabitant of Siberia, and must be a diviner to know the names of the many creditors of his tenant who have custodiams against him, as otherwise the search for them may be endless, besides the heavy expence attending this motion, (for which see my said preface, and the chapter on Custodiams in the following work) and all this under the aforesaid fiction of the Crown's prerogative being concerned therein.

Then, this same most unlucky outlawed person (who perhaps on a fair trial might not owe the plaintiff a shilling) is thereby put out of the protection of the law, so that he is incapable of suing for his rights, or bringing any action for redress of injuries, and all his goods and chattels, without any committed offence, forfeited to the King; he is incapable of being either a grand or a petty juryman; and some have thought (which I leave to the learned) of voting on an election, or filling any office in the state, whilst this (perhaps most unjust) outlawry is subsisting against him.

And then, upon this proceeding, the creditor takes all, and by *Elegit* but a moiety; by this, he gets an *actual possession*, on the same fiction that the King is concerned; by *Elegit*, in the general, but a legal possession. Suppose then, that this process should never be permitted to issue but upon a positive affidavit of at least twenty pounds being justly and fairly due by the defendant to the plaintiff; that no priority should be given to the execution thereon, but as it is now by law between *Elegit* and *Elegit*; and (as I have before mentioned) that *Elegits* on judgments should reach the whole estate, as is the case on these Custodiams, and on statutes of the staple; and that the fair creditor should get an actual possession thereon, without the trouble, loss of time, and expence of an Ejectment to get a second possession of the same thing; or provide (as in other cases) that all the aforesaid strongly interested persons should have real and sufficient notice of the oppressive and distressing proceedings on this process; would it not be better for all the persons I have mentioned as interested, which may include the whole nation, except the Attornies and Officers of the courts who issue, and the sheriffs and sub-sheriffs who execute them. It has been said,

said, that the judgment creditor may prevent his being injured by this process, by extending immediately on an *Elegit*; but every man who knows any thing of these matters, must know that this would as effectually destroy this common security of the kingdom, as this process is effecting it every day.

Attempts have been made, and some of them of my promotion, to relieve us from the dreadful *abuses* which attend the proceedings on this process: but, alas! the private interest of a few individuals prevented it, as hath been too frequently the case in this unfortunate kingdom; yet, old as I am, I will not yet despair of seeing it accomplished; if not, I have this comfort, that I have done my part to the best of my abilities, and without any private gain or selfish view. The paucity of cases in the books (I mean the English publications, for there are none here) will evince how very sparingly the process of outlawry have been ever used in England; and in one of them, 12 Mod 413, there is a case, where a person having outlawed another in a civil action, whom he knew was visible, and might be easily served with process, was ordered to reverse the outlawry at his own charges. And some years ago, having written to an officer of the Exchequer in
England,

England, my acquaintance, for the proceedings upon *Custodiams*, and *Injunctions* upon such Outlawries, in civil actions between party and party, he sent me the rules of the revenue side of the court of Exchequer there, (which are yet in my possession) and among them, there is but one in any sort relating thereto, which is of the 13th of May, 16⁹9, and is, “That where any outlawry shall be transcribed into the court, and
“process made out thereon, and afterwards such
“outlawry shall be reversed, before any judgment
“shall be entered for removing the hands of the
“Crown, and the party outlawed restored to his
“possession, the prosecutor of such outlawry shall
“be paid such costs as shall be taxed by their
“Majesties Remembrancer, or his deputy, for the
“proceedings in the said court.” And at the same time informed me, that he had been several years an Attorney of the court, and had never been concerned in any such proceeding. And in 2 Atkins, 408, it is mentioned, as if it were a species of proceeding peculiar to this kingdom. In truth, it is a proceeding the *abuse* of which is almost equal to the destroying of the credit of a country, and is a disgrace to the justice thereof.

There

There is yet another object worthy of attention, and that is the present state of the malt liquors of this kingdom, that indispensable necessary of life; a matter worthy of most serious consideration and attention, not only with regard to the great loss which the kingdom sustains by the prodigious sum which the vast importation of this commodity takes from it yearly, and the great diminution of his Majesty's revenue of Inland Excise; but chiefly to the health and morals of the lower sort of people, which are almost destroyed by the substitution and too general consumption of spirituous liquors; there being hardly a village, nay, even a large town or city, in the kingdom, where a drop of Irish Ale or strong beer is to be had which the poorest wretch can with safety admit into his stomach; nothing but English Porter, which they of circumstances only can purchase; and even this from the slowness of its vent, and the adulteration it suffers, is often hardly drinkable, to the extreme great prejudice of those two important objects, tillage and manufactures.

In order the more fully to investigate this most interesting matter, it will be necessary to take an account, which may be easily obtained, of the
quantity

quantity of English strong Beer and Ale imported at present into this kingdom; of the duty of custom and excise, and other charges here thereon; the Inland Excise upon the Irish malt liquors; the expences of this manufacture; the difference in those expences between the time the duties were imposed thereon and now, and the prices at which the English and Irish malt liquors are in the general sold at in both kingdoms; in which, we are also to take into consideration, the great advantages which the English brewers have over those of this kingdom, from the prodigious bounty upon exportation; in the measure of their gallon, and in the hops to the brewers there and here, not only in price, but in the quality, as they have the first choice, &c.

When all this shall be done, I am inclined to think that, on a fair comparative view, it will appear that until the brewers here have some further encouragement for brewing better liquor than they have at present, we may despair of ever having it; as some proof whereof, it must be within the memory of many, when good wholesome ale was sold in this city for two pence and excellent for two pence half-penny a quart; so that it was usual for mechanicks, and others of higher rank,
to

to spend an evening over a cup of it; and there were several Brewers then extremely wealthy; whereas, now it is much otherwise, though there is not near the number in the trade that were then.

But now, as to the benefit which may arise to the revenue of this kingdom from the encouragement and improvement of the Brewing trade of it: The strong Beer and Ale imported here from England last year, amounted to near 54,000 barrels, of which those of strong Beer, called Porter, were not less than 53,000, for the importation has been encreasing every year for some years past. For these 54,000 barrels about £56,700, Irish money, has been sent from this kingdom, at 21s. English, a barrel, which is what the importing Irish merchant only pays for it, though sold for perhaps 30s. for consumption in England, as he has the benefit of the drawback or bounty in England, upon exportation from thence; so that what with £9,000 being the freight thereof, at 20s. a tun, as also the cost of insurance, and other charges, as for butts, hogsheds, barrels, &c. not a less sum than £70,000 is sent from this unfortunate kingdom, and must increase if not prevented by brewing better liquor here.

The duties of Excise and Custom, then, upon the quantity so imported, according to the present method of rating it on the contents of the English barrel, which being some small matter under 1s. 8d. a barrel, amounts to very near, but not quite, £4,500 per annum; (which imported Beer is not liable to any Inland Excise) whereas, the duty upon the like quantity manufactured here, which, from the late alteration made in the measurement of the gallon, respecting the additional duties, and the loss of Excise thereby, is at the rate of 4s. and some small fraction of a halfpenny, per barrel, would amount to upwards of £10,800; so that in this case, the increase to the revenue of the kingdom would be £7,200, which would increase with the consumption; besides the increase in the revenue (and no inconsiderable sum) by the duty on the additional quantity of hops used in such brewing, which would be supplied from England. And then whatever detriment the prevention hereby of the importation of such English malt liquor might be to some individuals in England, it would be no loss, nay, it would be a saving to the revenue thereof, as not only the whole
Excise

P R E F A C E.

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Excise thereon, being 8s. a barrel, is drawn back upon the exportation of these liquors, but 1s. premium given upon every barrel so exported, when barley is at 24s. a quarter, or under.

It has occurred to some persons (if it could be done without injuring his Majesty's hereditary revenue, which should never be infringed whilst we regard the preservation of the constitution of this kingdom; an assertion which may seem strange to some, yet is most certainly true,) in order to encourage the Brewers, to take off some of the duties upon malt liquors, and to lay an equal portion upon malt. This, on the other hand, has been objected to, as it might be subjecting the country gentlemen to the Excise laws; but there is such a duty in England without any such inconvenience, for by the Act which induces it there, a composition may be made for it; and so it might be here.

It is true, the Brewers of this kingdom have lately had a very great advantage in the alteration which has been made in the measure of our gallon, to wit, from $217 \frac{6}{10}$ to $272 \frac{1}{4}$ cubical inches, so far as it reaches, which is only to the

Additional Duties, not to the *old Excise*, it being the King's *Hereditary Revenue*, and not to be infringed without his previous consent; the history of which alteration is as follows.

Sir James Shean and partners, to whom, and ten others, the Revenues of this kingdom had, in the year 1676, been farmed at the yearly rent of £240,000, having observed that the gallon by which their predecessors * had received the duty of excise, did contain $272\frac{1}{4}$ cubical inches, when, at the same time, the common gallon ale measure, made use of through the kingdom, and which was authorized and sealed by the several clerks of the market, did consist of no more than $217\frac{6}{10}$ cubical inches, being just $\frac{4}{5}$ of the gallon by which they received the duty; and this being a loss to the *Farmers*, upon enquiry how the law was as to this point, they found that by an Irish act, 28 Hen. VI. c. 3. it is enacted, "That there shall be but one measure throughout the kingdom, that is to say,

* To wit, John Forth, of London, alderman, to whom, and ten others, the said revenues had before, in the year 1669, been farmed for seven years, at the yearly rent of £219,500, as appears by the deed in the *Rolls*.

the gallon, the pottle, the quart, the pint, and the half-pint, for measuring wine, ale, and other liquors;" but it does not mention what the contents of the gallon ought to be.

That in another Irish act, 7 Will. III. c. 24. there is a gallon for measuring corn appointed, containing $272\frac{1}{4}$ cubical inches, which is answerable to the Winchester measure; this measure was to remain in the Exchequer for a standard.

The 10 Hen. VII. c. 22. makes all the laws in force in England to be so in Ireland, the *Farmer* then enquired how at that period the gallon was ascertained in England, which was as follows, by the 51 Hen. III. stat. 2. the gallon was thus settled, an English penny, called a *sterling round*, and without clipping, to weigh 32 wheat corns in the midst of the ear, 20 pwts. to make one ounce, 12 ounces one pound, and 8 pounds one gallon of wine, and 8 gallons of wine to make one *London* bushel, and 8 bushels one quarter.

In the 12 Hen. VII. c. 5. Eng. all the measures in England were called in, and a new standard measure was erected; and as before the said stat. the

the gallon was to contain 8 pounds of wine, the gallon thus established was to contain 8 pounds of wheat, of Troy-weight; and as 8 pounds of wine put into a cavity that shall just receive it, and no more, is to another cavity that shall contain 8 pounds of wheat, so is $217\frac{6}{10}$ cubical inches, the contents of 8 pounds of wine, to $272\frac{1}{4}$ cubical inches, the contents of 8 pounds of wheat.

Thus the *Farmers* found out the contents of the liquid gallon in England in the 10 Hen. VII. and at all times before; and as the Irish used that gallon in the common ale measure, and as the English Act of 12 Hen. VII. was not made an Act in Ireland, they considered the gallon containing $217\frac{6}{10}$ cubical inches, as the only legal standard measure in Ireland, and upon a controversy heretofore between the *Farmers* of the Revenue, when it was set to farm, and the Brewers, the matter was debated at a Council board, who gave their opinion in favour of the gallon $217\frac{6}{10}$ cubical inches.

The practice of taking the duty of Excise upon Beer and Ale, by the small gallon of $217\frac{6}{10}$ cubical inches, continued until the 11 & 12 Geo. III.

c. 1. when the legislature, upon considering the act of 12 Eliz. c. 3. and the said statute, 7 Wil. III. c. 24, which mention the ale gallon as containing $272\frac{1}{4}$ cubical inches, enacted in the money bill, that the Excise should be taken by the gallon containing $272\frac{1}{4}$ cubical inches. The difference, then, between $217\frac{6}{10}$ and $272\frac{1}{4}$ is a fifth part, so that the Crown loses almost a fifth part, or near 1s. of the additional duty formerly received, but it is in this only, for the alteration is not used in taking the *Old Excise*, (although it be claimed by the Brewers) for the reasons I have mentioned before *.

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* When Humphry French was lord mayor, an Act passed; 9 Geo. II. c. 19, §. 1. making the Dublin Brewers barrels to contain 40 gallons, and the half barrels 20 gallons, according to the $217\frac{6}{10}$ cubical inches, which accounts for the above alteration, that each gallon of the barrel of 32 gallons should contain $272\frac{1}{4}$ cubical inches; for 32 gallons of the latter are exactly equal to 40 gallons and six tenths of the former dimensions.

The Dublin Society once had the most important object of encouraging by premiums or bounties the improving the malt liquors of the kingdom, which, at the same time, would also much promote its agriculture, (the primary cause of that noble institution,) greatly at heart, as their then proceedings will shew; but a recent
rage

I am convinced, if the Revenue laws of this kingdom were now to be collected, contracted, and properly digested, and every law by which a forfeiture, or a penalty might be incurred, were to be promulgated as publickly throughout the kingdom, as possible, it would be productive of much advantage to the Revenue, not only in the prevention of many frauds, but the saving of a considerable portion of the expences attending the many legal prosecutions on account thereof. The collections of such of these laws as had been made antecedent to the 33 Geo. II. c. 10. by which the number mentioned in the statute of the 31st. of the same reign, c. 6. with these statutes, and the several laws since made, form at this day an absolute mass of contradiction, confusion, and perplexity. And there is not a session of parliament in which there are not as many new Acts, or clauses for Acts, proposed as there are under officers, who wish to have as little trouble in their

rage in a few (who seldom fail to attend, and influence others) for certain manufactures which we cannot export, (I need not say more) hath so much engrossed their attention of late, that *Agriculture* is become too much but a subordinate consideration; and the reclaiming the *Wastes* of the kingdom, (many millions of acres) those inexhaustible mines of population, wealth, and strength, (of which an Earthquake, or some such special visitation of Heaven, only could deprive us) almost totally slighted.

employments

employments as possible. It would be well worth while to pay generously some gentleman of the bar to complete what I have here mentioned against the next session of parliament.

And now to conclude; the most honourable and respectable list of subscribers to these my attempts, cannot but make me a little vain; yet I tremble for their success, and, with great humility, crave leave to hope, that whatever they may fall short of any expectations from them, that the most favourable indulgence of my readers will consider, that they are the first of the kind in this kingdom, nor have I met with, or ever heard of any upon the same plan even in England; as also that the well-known multiplicity of businesses in which I have been all along engaged (perhaps exceeded by none that ever was of the sphere I am in) will be kindly taken into the account.

As to the omissions in the body of the work, which are supplied at the end of it, the searching for the Rules of the Court was very laborious, as the office books were not indexed or alphabetted (as it is called) for near sixty years after the time

from which I took my search; and after the first volume had been printed; upon a second search, (which not till then occurred to me was necessary) I found that some had been omitted in the Indexes, or mis-indexed,, and one new one after made. But in order to make amends the best way I can, I have, after the *general* Index to the work, given a *particular* short one of all the Rules only, of the Revenue side of the Exchequer, which will be very satisfactory to the Court, and the Practitioners. Then, other matters occurred as worthy of insertion since the first volume was printed, and as the work is divided into chapters, they could not then be inserted in those to which they properly belonged.

It is also requested, that on receipt of the two volumes, the errata of the press (such as are material, for which I must for the same reasons also plead for indulgence) may be corrected with a pen; half an hour might do it effectually.

But here I cannot help observing, that notwithstanding the contents and proposals had been not only a considerable time advertised in several of the publick papers, but posted up in the halls
of

P R E F A C E.

li

of the Four Courts, and in several of the publick Coffee-houses in the city, yet, not even a single Merchant, nay more, not a Revenue Officer, save the Commissioners, their two secretaries, and about four more, appears in the list of subscribers, although the work so especially appertaineth to them and their respective businesses.

of the Four Courts, and in several of the public
Coffee-houses in the city, yet not even a single
Merchant, nor more, not a House or Church,
have the Convention, then two hundred and
about four more, appears in the list of
signers, although the work is generally ap-
propriate to their and their respective busi-
ness.

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N. B. Lord Chief Baron Parker's Reports of Revenue Cases in the Exchequer in England having appeared since the two Volumes of this Work were finished, and it being apprehended that a few points therefrom may be acceptable, they are accordingly inserted after page 345 in the second Volume.

*** For the Errata see the End of the second Volume.

A TREA-

CHAPTER IV

THEORY OF THE GROUND
The ground is the basis of all life and
the source of all food. It is the
storehouse of the elements of life and
the source of all energy.

THEORY OF THE GROUND

THEORY

THEORY OF THE GROUND
The ground is the basis of all life and
the source of all food. It is the
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THEORY OF THE GROUND

A
T R E A T I S E
O F T H E
E X C H E Q U E R A N D R E V E N U E
O F
I R E L A N D.

C H A P. I.

O F T H E O R I G I N, J U R I S D I C T I O N, A N D D I V I S I O N
O F T H E E X C H E Q U E R.

IT is not designed in the following treatise to enter into a disquisition concerning the ancient constitution of the Exchequer * in England; or to show how it was formed from, and agreed with, that of Normandy: those who are desirous of receiving information on that subject will find their curiosity amply gratified in the laborious and learned researches of Mr. Madox, in his history of the Court of Exchequer.

* The common and most probable derivation of the Name is from the old French word *ESCHEQUIER*, which signifies a Chefs-board, or Chequer-work; and because a cloth of that kind was laid upon the table, upon which the accomptants told out the King's money and set forth their accounts, it was called the Court of Exchequer. Madox 109.

Court of
Exchequer in
Ireland,
formed from
that of Eng-
land.

Co. Litt. 141.
b. 7 Co. 22.
b. Calv. case.

It is sufficient to observe, that the Court of Exchequer in Ireland, which is one of the four superior courts at Dublin, was formed after the Exchequer in England, probably about the 12th year of the reign of King John, viz. A. D. 1210, at which time that King caused all the laws and customs of England to be established, for the future, in Ireland; as appears by a charter of Henry III. beginning with these words; "Rex, &c. Baronibus, militibus, & omnibus libere tenentibus L. salutem. Satis, ut credimus, vestra audivit discretio, quod quando bonæ memoriæ Johannes, quondam rex Angliæ, pater noster, venit in Hiberniam, ipse duxit secum viros discretos & legis peritos, quorum communi concilio, & ad instantiam Hiberniensium, statuit & precepit leges Anglicanas in Hibernia, ita quod leges easdem, in scripturas redactas, reliquit sub sigillo suo ad scaccarium Dublin."

and agrees
with it in its
business, &c.

And as the Exchequer in Ireland was formed from that of England, so it agrees with it pretty much, as well in the names and duty of its officers, as in its business and practice; being, like that, instituted to order and determine the rights and revenues, and to recover the debts and duties due to the crown.

Division.

According to the usual division, this Court consists, as it were, of two parts; whereof the first is called the judicial or superior part; and the other, the receipt or inferior part of the Exchequer.

Judicial or
superior part.

The judicial or superior part of the Exchequer is conversant, especially, in the judicial hearing and deciding of all causes appertaining to the King's coffers; and was anciently called, *Scaccarium computorum*. And this part of the Exchequer is a Court of law and equity.

The

The Court of law, or *plca fide*, is held, after the course of the common law, before the Barons. And here the plaintiff ought to be farmer or debtor to the King, or some way accomptant to him. And in this Court the Attorney general brings his information for any matter touching the King's revenue. And the leading process is either a writ of Subpena, or *quo minus*. A Court of law.

The Court of equity is held before the Treasurer, Chancellor, and Barons; but usually before the Barons only. The proceedings are by English bill, and in a great measure agreeable to the practice of the High Court of Chancery. And the plaintiff must here likewise set forth that he is debtor or farmer to the King. In this Court the clergy usually exhibit bills for the recovery of their tythes. And here the Attorney general brings bills for any matters concerning the revenue. And any person grieved in any cause prosecuted against him in behalf of the King, may bring his bill against the Attorney general to be relieved in equity. And a Court of Equity.

And by a standing rule in the equity side of the Court upon filing any bill against the Attorney general to be relieved against any information, *scire facias*, or other matter, he shall not be served with a subpena to answer, but shall be attended with an attested copy of the bill, and an order desiring him to answer in four days after such service; which order the Chief remembrancer is to enter of course. And if the Attorney general shall fail to answer within that time, upon affidavit made of such service and motion thereupon, an order shall be granted to stay proceedings, until answer or further order of the Court. And his answer is usually sworn to. Rule as to proceeding against the Attorney gen.

And the Attorney general may call upon any that are interested in the cause, or any officer or others, to instruct him in the making of his answer, so as that the King be not prejudiced thereby.

By fiction all
persons may
sue here.
3 Blackst.
Plowd. 218.
Dyer 328.

But now, by a fiction, all kinds of personal actions may be prosecuted by any person in this court. For as all the officers and ministers of this court have, like those of other superior courts, the privilege of suing and being sued only in their own courts, so also the King's debtors and farmers, and all accomptants of the Exchequer, are privileged to sue and implead all manner of persons in the same court that they themselves are called into. So that by the suggestion of privilege, any person may be admitted to sue in the Exchequer as well as the King's accomptant; and the surmise of being the King's debtor is become mere matter of form and not traversable. And the same holds with regard to the equity side of the court; for there any person may file a bill against another upon a bare suggestion that he is the King's accomptant.

What actions
must be
brought here.
Hard. 193.

Hard. 176.

Every action, which concerns the King's revenue immediately, must be sued in this court; and if brought in another court will be removed hither. As where an ejectment is brought by a person, whose title is under an extent out of this court, for debts in aid. So if a man be outlawed in a civil action, and lands in his possession be extended, and a third person who claims a title to them brings his action, it must be in this court.

Prec. Cha.
153. 2 Vern.
426. J. C.

So where an extent in aid was taken out by the King's farmer of the hearth-money against his own debtor,
against

against whom a commission of bankruptcy was before awarded, and the assignees under the commission brought their bill in Chancery to set aside the extent in aid; the bill was dismissed, for that the court of Chancery had no jurisdiction in cases of this nature, which were only proper for the court of Exchequer, from which the extent issued, and where it was examinable.

So the officers of the revenue ought to be sued in this court for what they do in the execution of their office, and the court will remove an action, commenced in another court, against an officer, for seizure of a ship, though no information for the ship be yet filed. Bunb. 34.

So if trover be brought in another court against a custom-house officer, for tea and other goods seized by him, and condemned, and other articles are thrown into the declaration, to give colour to the action there; the court of Exchequer will remove the action. Bunb. 309.

But where an officer of customs seized two cables, one of which was condemned and forfeited, and the owner brought trespass in B. R. against the officer for taking a large quantity of cordage generally, it not appearing but that the action was brought for that cable only which was not condemned, the court of Exchequer would not remove the action. Bunb. 306.

And where a person was fined and imprisoned by the Commissioners of Excise in England, and brought his action for false imprisonment in B. R. the court of Exchequer would not remove the action, because it did not immediately concern the revenue of excise, but was a penalty imposed for an offence committed in it; and so belonged Hard. 193.

belonged no more to the court than other like cases arising upon fines and imprisonments.

Jurisdiction
of the court
as to receiv-
ing pleas of
discharge.
Somers arg.
22.

It appears that formerly the jurisdiction of this court was very defective, in what seemed absolutely requisite for the doing justice to the subject, who, upon accounting, was put to his petition for a writ or letter of the great or privy seal, for just and reasonable pleas by way of discharge. But by the 5 Ric. 2. c. 9. Eng. it is ordained, "that the Barons shall from thenceforth have full power to hear every answer of every demand made in the Exchequer; so that every person impeached, by himself or by any person, shall be received to plead, sue, and have his reasonable discharge, without tarrying for, or suing, any writ, or other commandment."

The different
rolls of the
court.

In general the business and acts of the court of Exchequer were anciently entered or recorded in several rolls; the principal whereof, besides the plea rolls, were the *Rotulis Annalis*, or great roll of the Pipe, and the *Memoranda*.

The great roll
of the pipe.
Madox. 618.

Amongst the records of the Exchequer, the great roll of the pipe must be placed first, by reason of its pre-eminent dignity. It was and is the most stately record in the Exchequer, and the great medium of charge and discharge of rents, farms, and debts due to the Crown. Into it the accompts of the ancient royal revenue were entered through divers channels. And the authority of it was so great, that when debts had been put in charge there, they could not be discharged unless by judgment or award of the chief Justiciary, or of the Treasurer, the King's Chancellor, or his Council or the Barons.

The

The records or bundles made up by the two Remembrancers of the Exchequer, have been usually called *Memoranda* or the Remembrances. A Remembrance was anciently wont to be made for every year in each of the Remembrancer's Offices. In those *Memoranda* there was anciently entered great variety of business; for instance, the King's writs and precepts of many kinds, relating to revenue tenures, commissions of Bailiwicks, custodies, farms, &c. presentations and admissions of officers of the Exchequer, &c. pleadings and allegations of parties, judgments and awards of the Court, recognizances of debts, and conventions of divers kinds, accompts and views of accompts; with several acts relating to accomptants; inquisitions of sheriffs, escheators, &c. advents of sheriffs, escheators, &c. and in general all those things which were comprised under the term, *Communia*, or common Business.

The Memoranda or Remembrancers.
Madox 619.

The other part of the Exchequer, called the receipt of the Exchequer, or the inferior Exchequer, or Treasury, is properly employed in the receipt and payment of money; and in England this is a distinct court and wholly under the Treasurer. And if any orders are fit to be abolished in the Receipt, or any new orders to be made, it is done by the Lord Treasurer, and usually with the concurrence of the Chancellor and under Treasurer. If the King thinks fit to command, by privy seal, that any new order or method should be observed in any part of the receipts, it is usually directed only to the Treasurer, and the Chancellor, and under Treasurer. And if it be thought proper that it should be published and enrolled in the Court of Exchequer, to the end that all officers and accomptants might the better take notice of it, the Lord Treasurer

The receipt of Exchequer or inferior Exchequer.
Somer's arg. 54. &c.
Madox 179.

Treasurer, and Chancellor and under Treasurer come into the court of Exchequer, and the Treasurer commands it to be published and enrolled, together with his own assent to it, and the assent of the Chancellor and under Treasurer; but no notice is taken of the Barons in any part of the business.

The Barons
have no power
over it.
Somers argu-
ment 5 Mod.
46, 62.

It was determined by Lord Somers, on a writ of error brought in the Exchequer-chamber, on a judgment in the Exchequer in England, in the case of Hornby, &c. against the King, commonly called the bankers case (tho' contrary to the opinion of all the Judges, except C. J. Treby) that the Barons of the Exchequer could not, upon the prayer or petition of a grantee of any branch of the revenue to them immediately, order the Treasurer or Chamberlain to pay out of the receipts of the Exchequer the arrears or growing payments; but that such grantee must resort to his petition of right; for that their power over the King's treasure is only *in transitu*, and that the law has intrusted the King himself only with his treasure, when once it comes into his coffers.

Irish treasurer
accountable
anciently to
the Exche-
quer in Eng-
land.
Madox 633.

It appears from many instances mentioned by Madox, that the King's Treasurer in Ireland, in the earliest times, accounted at the Exchequer of England for his receipts out of the King's treasure at the Exchequer of Dublin, by the counter-rolls of the latter Exchequer exhibited at the former.

And King Edw. I. in the 21st year of his reign, commanded that for the future the accompts of Gascony and Ireland, should be rendered yearly at the Exchequer of England, before the Treasurer and barons there; viz. the former

former by the constable of Bourdeaux, and the latter by the Treasurer of Ireland.

C H A P. II.

OF THE SEVERAL AND RESPECTIVE OFFICERS
BELONGING TO THE EXCHEQUER, BOTH
SUPERIOR AND INFERIOR.

THE officers of the Exchequer may be distinguished into those of the superior Exchequer, and those of the inferior Exchequer.

Officers of the
Exchequer
distinguished,

The officers of the superior Exchequer, are as follow.

into those of
the superior.

The LORD HIGH TREASURER.

He is the third great officer of the Crown in Ireland, and the highest officer both of the superior and inferior Exchequer, and his office is as ancient as the establishment of the English government here; he was in all ancient writs and records called, Treasurer of the Exchequer. He is the chief judge in all causes, that are instituted by English bill, in the chancery or equity side of the court. And by 10. H. 7. 1. it is enacted, that the Treasurer of Ireland, should have as ample power in all things belonging to his office, as the Treasurer of England; as to make customers, comptrollers, farmers, and other officers, accomptants for the greater increase of the King's revenue in Ireland; and that he should every year make a declaration of his accompt of the revenue before the Barons of the Exchequer, and before such of the King's Council there, as should be appointed by the King's Lieutenant

Lord high
treasurer.

OF THE EXCHEQUER AND

or deputy; the same declaration to be certified into the Exchequer in England: and there the accompt to be determined before the Barons. But notwithstanding this act, the Lord Treasurer enjoys very few of the privileges, which belong to his office. For the Vice Treasurer has the receiving and issuing of all the revenues, both annual and casual; and all the said offices are granted by the Chief Governors for the time being, by their own warrants, and not by the warrant of the Lord Treasurer.

The CHANCELLOR of the EXCHEQUER.

Chancellor of
the Exche-
quer.

Madox 139,
580. 4 Inst.
104, 119.

In the ancient Exchequer, this was a very great officer. He was one amongst the Justices and Barons that usually sat there, and transacted several things in the Exchequer in such manner, as that we may suppose it to have been anciently part of his duty to assist there. He seems to have been a control or check on the Treasurer. He has the custody of the seal of the court, and is a Judge in matters of equity.

The LORD CHIEF BARON, SECOND, and THIRD BARON.

Barons.

These have judicial power in all causes of law, equity, and revenue. In the two first they govern themselves by the common methods of proceeding in the courts of Chancery, King's Bench, and Common Pleas; and in the last by rules of their own, and in respect hereto the court is always open, as well out of as in Term. They are called Barons of the Exchequer, because in England Barons of the realm were occasionally summoned and sat there, with other great Officers of State. Upon their entrance into office, they take an oath not to respite or protract

REVENUE OF IRELAND.

11

protract the King's business, but to give it preference to all others.

The LORD CHIEF BARON.

He is at this day the chief Judge of the court in matters of law, information and pleas. Therein he answers the bar, and all suitors; and gives orders for judgment thereupon. He alone sits as Justice of Nisi Prius to try all issues joined in this court for the city and county of Dublin; but in his absence one or both of the other Barons may be Judge or Judges of Nisi Prius. He takes recognisance for the King's debts, for appearances, and for observing of orders. He takes the presentation of all the officers in court under himself, and of the Lord mayor of the city of Dublin.

Chief Baron.

The AUDITOR GENERAL.

He is an officer both of the superior and inferior Exchequer. In his office are entered *Verbatim* all * grants of land and offices, whereon any rent is payable to, or stipend payable by the King; and from thence he makes out rolls of all the King's rents; with him are lodged all the deeds of assignment or purchase of lands, &c. out of which any rent or duty is payable to the King; (otherwise the rent is always continued in the name of the former proprietor;) and he gives constats or certificates of such rents when demanded. In his office are likewise lodged all the accounts of the Vice treasurer, and clerk of the

Auditor General.

* It was determined in the case of the King v. Daly 12 Dec. 1747, that a book from his office, in which patents and grants of lands are entered, is evidence. But it must be proved by a clerk of the office, to be a book belonging to the office, and brought from thence.

hanaper, and of money imprested for any particular use or service; which accounts are made up by him, and passed by the Commissioners of accounts, after they are compared by them with the vouchers, and by the Auditor with the books returned to him by the vice treasurer, chamberlains, and clerk of the pells. He collects a particular of what rents are unaccounted for, and remain in arrear, and transmits the same to the Treasurer's remembrancer, to issue process for the levying thereof.

THE SURVEYOR GENERAL OF LANDS.

Surveyor General.

He has in his office all the surveys of the King's lands, &c., and if any controversy arise concerning the extent or boundaries of them, he appoints surveyors to settle the mears, and bounds, and the quantity of such estate, together with the yearly value thereof (if required;) for which purpose commissions are issued by order of the Exchequer, on which inquisitions are taken by a jury; and the escheator sometimes assists therein.

When a grant is to be passed for any estate, a warrant from the Lord Lieutenant is directed to him, and to the Auditor general, to make out a particular of the estate; the Surveyor general makes out the survey in parchment, and gives the Auditor the particular; and, out of the survey, he ascertains the rent payable to the Crown; the survey remains with the auditor, and the particular, when examined, and signed is transmitted to the Lord Lieutenant under both their hands; upon which a warrant is made directed to the Attorney general, to prepare a *fiat* pursuant to such particular.

The

The REMEMBRANCERS (*Rememoratores*,)
Formerly called Clerks of the Remembrance.

Of those there are two distinguished by the names of the *King's* or *Chief remembrancer*, and the *Lord treasurer*, or *second remembrancer*. Remembrancer.

The KING'S REMEMBRANCER, OR CHIEF
REMEMBRANCER.

He is a principal officer of the court, of great trust. In his office all bonds for the King's debts, also, all recognisances taken before the Barons for any of the said debts, for appearances, and for observing orders, &c. are entered or lodged; and he makes out the necessary process thereon. All informations upon penal statutes, and upon forfeitures, and escheats, either at law or in equity, and the pleadings, and proceedings thereon, are filed in his office. All inquisitions upon commissions out of this court to find out the King's title to any lands, &c. forfeited or escheated to the crown, (especially to those which were forfeited by the rebellions of 1641 and 1688,) are returned thither: (such as are held upon commissions out of the court of Chancery being in the rolls office;) as also several of the proceedings upon the acts of settlement and explanation; as the certificates of the commissioners for executing said acts, decrees of innocence, &c. and likewise all inquisitions on *levari facias*, for the King's debt, and *custodiams* and injunctions, are thereupon made out by order of the court. All english bills in this court, and the pleadings and proceedings thereon remain in his office. He has the entering of all pleas, judgments, &c. relating to the King's revenue. In his office are all the books relating to the customs and excise. He makes out process against King's remembrancer.

against the collectors of the customs and excise, &c. for their accounts, not being by act of parliament directed to be otherwise managed than according to the course of the court. All disputes touching irregularities in the practice and proceedings in the court are referred to him by the court. He has in his office all the reducements and abatements of quit rents, which were made by the Lord Lieutenant or other Chief Governor and Council, pursuant to the act of explanation. He has also all the reducements of fines by the commissioner of reducements. He reads in court the oaths of all the officers, attorneys, and ministers of the court, when they are admitted; and he also reads the oath of the Lord mayor of the city of Dublin, and of all the sheriffs in the kingdom; writs of prerogative or privilege for officers and ministers of the court are made by him. All sums of money brought into court by order are lodged with him, although no security is required of him, on his entring into office. He has in his custody the red book of the Exchequer.

He has under him five secondaries, a filacer, and other assistant officers. One of the secondaries has the office of the law pleas of this department.

THE LORD TREASURER'S, OR SECOND REMEMBRANCER.

Treasurer's
Remembran-
cer.

He takes notes of all rules and orders made in the court, relating to the King's revenue, except the customs, excise, and other such revenues which are in the Chief remembrancer's office. He makes process against all sheriffs, escheators, receivers, and bailiffs for their accompts. He makes process of *fieri facias* and extent for any debts due to the King either in the Pipe or with the Auditors. He makes a record, whereby it appears whether sheriffs and other

other accomptants pay their *profers* due at Easter and Michaelmas. And he makes another record, whereby it appears whether sheriffs and other accomptants keep their days of prefixion, or days appointed. Into this office are certified all estreats of fines, issues, &c. set in the superior courts at Dublin, or at the assizes or sessions. And into it are returned all the inquisitions upon the writs of *levari facias* and of seizures, which issue thereout for the King's rents, and also upon the writs of *levari facias* which issue thereout for fines, forfeited recognisances, and other matters estreated into the office; as likewise the certificates of sheriffs as to the goods of felons and fugitives, waifs, estrays, &c. in their bailiwicks. All the pleadings, orders, and proceedings touching the reducing, exonerating, respitting, or discharging any of the King's rents, fines, &c. are in this office; as are also the certificates of the commissioners of reducements, which are sent thither by the Chief remembrancer, on which an order is entered here to be taken to the Clerk of the Pipe to make out the *debet*; which *debet* is to be taken to the treasury, and, the money being paid there, an acquittance is given, which is to be brought to the Second remembrancer, who thereupon enters an order for the absolute discharge of the same. Formerly, transcripts of all the grants, that were passed by the crown, of any lands, &c. were brought in twice every year by the master of the rolls, (as it is said) and delivered to the court, and, by the court, transmitted into this office, to be compared with the entries in the Auditor's office, lest any thing should pass not entered by him; this office being a check to the Auditor's office as to the King's rents. In this office likewise were, formerly, enrolled all claims of privileges, franchises, liberties, &c. licenses of alienation, pardons of alienation, grants of goods of felons, fugitives,

OF THE EXCHEQUER AND

fugitives, and outlaws, waifs and estrays; but this does not appear to have been practised since Easter term 1686.

This officer has, likewise, under him two secondaries.

The CLERK of the PIPE.

Clerk of the
Pipe.

He makes out the yearly roll, which is called the great roll of the Pipe, of all rents and debts whatsoever, that are brought in by process to any of the other officers of the Exchequer, and accounted for in the court; and of all the debts that are in arrear and unanswered for by the sheriffs on passing their accounts. He also writes summonses to the sheriffs to levy the said debts upon the goods and chattels of the debtors, and if they have no goods, then he draws them down to the Lord Treasurer's remembrancer to write extents against their lands. He makes a charge to all sheriffs of the summons of the pipe and green wax, and sees that it is answered upon their accounts. All orders of discharge and respite whatsoever of any such rents or debts are entered with him. He makes out custodiams upon seizure or sequestration of any estate, and outlawry estreats upon process from the Treasurer's remembrancer's office; and, from time to time, renews process for all such arrears as stand out upon the roll. He has the drawing and engrossing of all leases of the King's lands. And in this office the sheriff's *quietus est* is prepared, as being the last office of account of the process.

The COMPTROLLER of the PIPE.

Comptroller
of the Pipe.

He writes out summonses twice a year to levy the farms and debts of the Pipe, which is called the second summons, and is in the nature of a *levari* against the body, goods, and lands of the debtor; and he also keeps a comptrol-
ment

ment of the pipe or counter roll of all arrears; he is assisting to the clerk of the pipe, and issues out the second process of the pipe, by warrant from the clerk of the pipe, and counter-signs it with the clerk of the pipe. And he also, as well as the clerk of the pipe, takes down what is *nihilled* by the sheriff on his accounts, and the sum he charges himself with.

The CLERK of the ESTREATS and SUMMONISTER.

Towards the reign of Edward III. the casual revenue being so much increased, that the clerk of the pipe could not engross all the sums estreated on his annual roll, and many of them being small, and paid on the first demand, it was necessary to make them part of the annual charge, in the same manner as the other annual revenue of the King was; therefore a new officer was created, viz. the clerk of the estreats; and instead of delivering the estreats of the Exchequer and other courts to the clerk of the pipe, they were, thenceforward, delivered to him, and he issued a distinct process from the summons of the pipe, viz. the summons of the green wax, which is the first process; and hence in this kingdom he is also called the *summonister*.

Clerk of the
estreats and
summonister.

And this officer, as well as the clerk of the pipe, receives the answer of the sheriff in court; and the *nihils* are to be entered on the great roll.

As clerk of the estreats, he has the care of all fines, amerciaments, and casualties, that arise in any of the courts of record; and of the fines and amerciaments that are imposed in the Exchequer, in the King's remembrancers office and pleas office, or at the assizes or sessions, which are brought into the clerk of the estreats, by the

respective officers of the courts, and clerks of the peace; upon which he makes out process; which is transmitted under the seal of the court to the sheriffs, to levy such fines, forfeitures, and debts; and this process is in the nature of a *scire facias*, which notwithstanding the sheriff must answer in his accounts, or take bonds from the party, to clear such debts in court.

The TRANSCRIPTOR and FOREIGN APPOSER *.

Transcriptor
and foreign
apposer.

He is an officer in the Exchequer, to whom all sheriffs and bailiffs repair, to be apposed by him of their green wax, after they are apposed of their sums out of the pipe office; and from thence he draws down a charge upon them to the clerk of the pipe. His business is to examine the sheriff's estreats with the record, and to ask the sheriff what he says to every particular sum therein; he sends the debts *nihilled* by the sheriff to the clerk of the pipe, which then being presumed to be debts that will stand out for some time, are by him entered on the great roll, and *debets* thereof sent by him twice a year to the comptroller of the pipe; who sends out the second process of the pipe; because having already been in process on the summons of the green wax, it hath answered *magna charta*, 9 Hen. 3. c. 8. by which no sheriff or bailiff shall seize lands for the King's debts, so long as the present

* In Gilbert's treatise of the Exchequer, this officer is said to be called *apposer*, for the same reason that the sheriffs accounts of their green wax were called *apposals*, viz. because the sheriff was then *apponere*, or to *place* his items to account. And he is called the *foreign apposer*, because the account on which he sat, was a *foreign* and distant account from that of the great roll, which was carried on by itself; or because this casual revenue, not arising out of originals sent into the court from the Chancery, as the certain revenue did, which was the *original* jurisdiction of the court, but being sent into the Exchequer by estreats out of other courts, was therefore called the *foreign* revenue. See Madox 708.

goods

goods and chattels of the debtor shall suffice, and the debtor be ready to satisfy the same.

The CLERK of the PLEAS.

In his office are all the proceedings at law between party and party, under the surmise or fiction of the plaintiff's being the King's debtor, and not immediately concerning the revenue. Clerk of the pleas.

The SERJEANT at ARMS.

He is an officer attending this court, as likewise the house of Commons. To him is directed the last process of contempt, on which a sequestration is grounded. Serjeant at arms.

The PURSUIVANT.

He was anciently a messenger attending the King in his wars, or at the council table, or in the Exchequer, to be dispatched upon any occasion or message. All sheriffs and coroners, and all officers of the court (except the marshal and usher) for misdemeanors, mis-execution, or non-execution of their office, and all persons guilty of any special contempt in this court, are committed to his custody. Pursuivant.

The USHER.

It was his duty to keep the Exchequer safely, and to take care of the doors and avenues of it; so as that the King's records which were laid up there might be in safety. It was also his duty to transmit the writ of summons which issued out of the Exchequer for the King's debts; that is, to cause them to be delivered to the Usher.
Madox 722.

several sheriffs to whom they were directed. It is likewise his duty at present to furnish the court with books, paper, and such necessaries.

The MARSHAL.

Marshal.
4 Inst. 107.
Madox 727.

To this officer the court committed the custody of the King's debtors during the sitting of the term, to the end that they might provide to pay the King's debts, or else be further imprisoned. Such offices as were found *virtute officii*, and brought into the Exchequer, were delivered to him to be delivered over to the treasurer's remembrancer. He also appointed auditors to sheriffs, escheators, customers and collectors, for taking their accounts.

But this office and that of the usher are now exercised by the same person; and yet in the patent to the usher there is no mention made of the marshal.

To the officers of the superior Exchequer may be added, as being attendant thereon, the King's Attorney general and Solicitor general.

The ATTORNEY GENERAL.

Attorney general.

He has a special charge of the revenue. No rent can be discharged or abated, but by his concession or consent. He puts into court, in his own name, informations of concealment of customs, seizures, &c. also of intrusions, waste, and encroachments upon any of the King's lands, and upon penal statutes, forfeitures, &c. He acts in general by *debet*, *constat*, or certificate, from the proper officers, in whose office the debt or matter, for which the information or bill is brought, is recorded. He prepares the

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the *fiats* for all patents for lands, estates, honours, &c. He is made privy to all manner of pleas that are not ordinary, and of course, which arise upon the process of the court; and he is an officer of such dignity and confidence, that his confession binds the crown in all suits and causes wherein he is concerned.

The SOLICITOR GENERAL.

He is assisting to the Attorney general in all the matters aforesaid, as to pleadings in court; and he, as well as the Attorney general, may prepare the *fiats* for patents.

Solicitor general.

The officers of the Inferior Exchequer, called the receipt of the Exchequer, are as follow:

The LORD TREASURER,

Of whom mention has been already made amongst the officers of the SUPERIOR EXCHEQUER, being the Chief officer both of the superior and inferior Exchequer, and of whom, as he now seldom acts, the whole business being done by the Vice treasurer or his deputy, there is no occasion for adding any thing more.

Lord treasurer.

The VICE TREASURER.

He is a principal officer of this part of the court, under the several appellations of VICE TREASURER, RECEIVER GENERAL, PAY-MASTER GENERAL, and TREASURER at WAR.

Vice treasurer.

He has the charge of all his Majesty's revenue, of what nature or kind soever, and is to account for the same. He or

Has the charge of the revenue.

or his deputy is to sign all receipts for money paid into the treasury, and received for him by the teller or cashier; as also all orders and debentures for money paid out. And no acquittance that is not signed by the Vice treasurer or his deputy (except those given by the sheriffs for debts issued in green wax) is or can be a discharge to the subject for any sum paid in, &c. except where some act of parliament, or the King, by letters patent under his great seal, shall otherwise appoint.

Pays the civil
and military
list.

As Vice treasurer and Receiver he only pays the civil list; and what remains, after the payment thereof, is transferred by him to the discharge of the military list, which he pays as Treasurer at war and pay-master.

The civil list
by debentures.

The civil list is paid by debentures made out by the Auditor general, and signed by him pursuant to the King's establishment, a copy of which is lodged with the Vice treasurer.

The military
list by war-
rants by the
Commissary
general.

The military list is paid by warrants prepared by the Commissary general of the musters, and signed by the Lord Lieutenant or other Chief Governors, and counter-signed by the Commissary general, and not by the secretary at war, as is usual in England.

Payments on
the head of
Concordatum
how made.

Payments on the head of the CONCORDATUM * in the civil list, are to be on warrants, to be moved for and granted at the council board, and these warrants are to be

* This is an annual sum of £5000, limited in the civil establishment, to be paid as shall be agreed, (from whence it has its name) that is to say, by *Concordatums* of the Lord Lieutenant, Lord Deputy, Lords Justices, or other Chief Governor or Governors and Council.

be signed by the Lord Lieutenant, or by the other Chief Governors, and a *quorum* of the council; and if the Vice treasurer exceeds, in his payments or warrants of *Concordatum*, the sum limited in the establishment, he is liable to refund and to make all such overplus payments good to the King.

And the general authority for all payments out of the treasury of this Kingdom, is the establishment of the civil and military list; which is signed by the King, and Lords of the treasury, and transmitted over hither. And the Vice treasurer cannot pay any warrant that comes to his hands, signed by the King, or any warrant of privy seal, or warrant under the great seal of England, for any sum or sums of money not included in the establishment, without being liable to have the same chequed and disowned.

Civil and military lists, his general authority for all payments out of the treasury.

And this sum is, in the establishment, expressed to be for freight, transportation, carrying of letters, and other expenses and rewards; sea service, repairing and upholding sufficiently, the King's houses; maintaining his forts; finishing needful undertakings of that kind, begun in apt places but not finished; erecting of more strength of the like nature in other fit and necessary places; diet and charge in keeping poor prisoners, and sick and maimed soldiers in hospitals; printing, riding, and travelling charges; prefts upon account, and all other payments; amongst which, the repairs of fortifications, and provision of hospitals are chiefly to be taken care of; and these *Concordatums* are to be every three months certified over to the privy council in England.

And no payment or allowance is to be made by *Concordatums*, but by warrant drawn by the clerk of the council in Ireland, passed openly at the council board there, and signed by the Lieutenant, Deputy, or other chief Governor or Governors, and by three or more of the officers following, viz. the Chancellor, Treasurer, Vice treasurer, and Chancellor of the Exchequer, the two Chief Justices, Chief Baron, Master of the rolls, and Secretary of state; and for default, either by exceeding the sums limited, by anticipation, or by not observing the said direction in every point, all the sums that shall be otherwise allowed and paid there, shall be set *in super*, as debts upon the Lieutenant or any other Chief Governor or Governors of Ireland, the under Treasurer, and all others that shall sign the same, to be defaulted, to the use of his Majesty, upon their several entertainments.

upon

upon his accounts; unless the payment he makes on such warrant be also pursuant to directions in writing from the Lord Lieutenant, or the other Chief Governors, and a *quorum* of the council thereupon.

Not to pay debentures or warrants without entering them with the clerk of the pells.

He is not to pay any debentures or warrants on the civil or military list, or any other account, without entering them with the clerk of the pells, and having them counter-signed by him; otherwise such payments will be disallowed in his accounts; so that he can neither receive or pay without a control; by means whereof the King cannot be defrauded.

To give Exchequer acquittances for all money paid to him.

For all money paid into the treasury, he or his deputy, is to give an acquittance, which is to be signed and entered with the Clerk of the pells, Chamberlains, and Accountant general, and to be delivered to the party paying his money. And this is called an Exchequer acquittance *. And when these acquittances are returned by the Accountant general or other person, as vouchers, they are to be filed of record with the Auditor general, where they are to remain, and are a charge on the Vice treasurer.

His accounts to be taken by Commissioners.

His accounts are not to be taken by the Barons of the Exchequer, but by Commissioners authorized under the great seal of England or Ireland. And upon his accounting before the Auditor and Commissioners, he delivers in books containing transcripts of every individual receipt, and sum of money by him received; and the clerk of the pells doth the like; which books remain with the

* Formerly, a list of these acquittances was brought weekly from the treasury to the Accountant general; but this causing great confusion in the accounts, as to dates, &c. the present method is pursued of sending them to the Accountant general to be entered as they are passed.

Auditor

Auditor general, as a discharge both for the Vice treasurer and the subject who paid his money. He also gives the Auditor general a fair transcript of all his payments under the several heads of the establishment, expressing at large the nature of the payments, and for what time &c. and when the Auditor general has examined and engrossed his account in parchment, it is brought with the vouchers to the Commissioners of accompts, who sit, and examine and compare the same; and they being satisfied therewith sign it.

When his account is thus passed, his *quietus est* is a duplicate thereof signed by the said Commissioners, which he keeps; and the other remains with the Auditor general.

THE TELLER OR CASHIER.

He receives all the King's money, and afterwards writes a bill in parchment for the party's acquittance who pays it; which acquittance is transmitted to the Chamberlains, who enter and sign it; and it is then delivered by them to the Clerk of the pells, to be entered and signed by him; and is then delivered to the party.

Teller or Cashier.

He also pays out the King's money upon debentures, and by orders from the Lord treasurer, and under treasurer, which are directed by the auditor.

THE CLERK OF THE PELLs.

He enters all the teller's bills into a book or parchment roll, called *pellis receptorum*. He signs, and enters all acquittances that are given by the Vice treasurer, and

Clerk of the Pells.

Receiver general or his deputy, for any rent, debt, or sum of money paid into the treasury. With him are also entered all warrants of debentures, upon which the Vice treasurer or Receiver general makes any payment; and hereby he is a perfect cheque upon the Vice treasurer, and ought to be able at any time to give a state of his receipts and payments, and to know what money he has in his hands to answer the King's affairs. He returns into the auditors office, yearly, books containing every individual acquittance, passed by the Vice treasurer, and Receiver general, or his deputy for that time; which the auditor compares with the like books returned to him by the Vice treasurer and chamberlains, that so the King may not be prejudiced, but the Vice treasurer fully charged with all the money received by him during the time for which he accounts.

The CHIEF CHAMBERLAIN and SECOND
CHAMBERLAIN.

Chamber-
lains.
Madox 732,
Somers arg.
51.

They are ancient and were great officers of the superior Exchequer in England; and sometimes sat and acted in person, and were numbered with the Barons there. But the office being such as might be executed by deputies the chamberlains by degrees made themselves useless, by leaving all the business to their deputies, and the office itself sunk by degrees to little more than a name. Their business, at this day, is pretty much the same with the Clerk of the pells, as to all receipts and payments into the treasury; and their books, as well as those of the Clerk of the pells, are transmitted yearly to the Auditor, not only to adjust the charge of the Vice treasurer and Receiver general, but to be compared with rent rolls in the auditor's office, whereby he ascertains what

what rents are received, and what remain in arrears, in order to the issuing out process for such as remain unpaid.

The AUDITOR of FOREIGN ACCOUNTS and IMPRESTS.

He audits all accounts of money imprested for the buying of arms, ammunition, and provisions, and all money issued by imprest for the building of fortifications.

Auditor of foreign accounts and imprests. Madox 729.

He is also assistant to the Commissioners for the imprest accounts, for the examining and making up all foreign or martial accounts or imprests within the kingdom of Ireland, except the Treasurer's accounts for the wars. To those several officers may be added,

The COMMISSIONERS for the TREASURY ACCOUNTS.

They are the lord high Chancellor, the Chancellor of the Exchequer, the lord chief Baron, and the Barons of the Exchequer for the time being, who are authorized under the great seal of England or Ireland; and before any three or more of these commissioners, the Vice treasurer and Receiver general is to account, formerly but once, but now four times in every year; and they are to examine his accounts, and the vouchers; and to compare them; and, being satisfied therewith, are to sign them: but before his accounts are fully cleared and discharged, they are further subject to the examination of the treasurer or commissioners of the treasury of Great Britain.

Commissioners for the publick accounts.

These Commissioners had likewise formerly under their inspection several other accounts, such as those of the ordnance, the board of works, money advanced by government,

Other accounts formerly under their inspection but now

under the
Commission-
ers of foreign
accounts.

ment by way of imprests, &c. But they are now confined merely to the treasury accounts; and all these other accounts are made subject to the examination of five Commissioners, constituted for that purpose, called the Commissioners of imprests and foreign accounts. But these are not properly to be considered as officers of the treasury.

C H A P. III.

OF THE PUBLICK REVENUE OF IRELAND.

AS a preliminary introduction to the present state of the revenue of Ireland, it might have been a matter of curiosity to have entered into an history or detail of the ancient revenues of the crown, the several branches which composed them, and the manner of levying, accounting for, and paying them into the Exchequer. But this subject I shall leave to the antiquarian, who has abilities and leisure to make the necessary researches into the publick offices and ancient records of this kingdom; and shall content myself with deducing an account of the Irish publick revenue, from the restoration, (soon after which the act of tunnage and poundage and the act of excise were made) to the present time.

And this publick revenue may now be considered as divided into, I. The King's HEREDITARY REVENUE. II. The ADDITIONAL DUTIES granted for the better support of government: And III. the APPROPRIATED DUTIES.

Hereditary
revenue.

And I. the Hereditary revenue, so called from its being vested in the King, his heirs and successors, and which amounts

amounts in gross, at a *medium* of the last 12 years preceding 25th March 1773, to about £640,000 a year, is that which either is the ancient patrimony of the crown; or else was granted to King Charles II. by parliament, by way of purchase or exchange for such branches of the King's inherent hereditary revenue as were found inconvenient or burdensome to the subject; or perhaps in lieu of forfeitures which the crown was entitled to; the produce of all which belongs to the crown, to be applied, under the constitutional trust, for publick services.

These may be considered in the following order, viz. Of what it consists.
 The King's rents, customs outwards and inwards, import excise, prizage on wines, lighthouse duties, ale, wine, and strong water, licences, seizures and forfeitures, hearth money; and the casual revenue, consisting of fines, forfeited recognizances, custodiam rents, together with some other casualties, as waifs, estrays, goods of felons and fugitives, &c.

The act of re-assumption, viz. 11 Wil. III. Eng. makes the crown rents, quit rents, and chiefrys, unalienable; and enacts that they shall for ever be and remain for the support and maintenance of the government of this kingdom. The act of 14 and 15 Car. II. c. 18, granting the revenue of ale licences, restrains the crown from farming it or charging it with gift, grant, or pension. And the act of 14 and 15 Car. II. c. 17. granting the hearth money, restrains the crown from particularly charging it with grant or pension. And these seem to be the only branches of the hereditary revenue which the crown is restrained from charging or aliening. See 5 Mod. 46, 54, &c. How far chargeable and alienable.

II. The

Additional
duties.

II. The next head to be considered are the Additional Duties, which are granted, in aid of the hereditary revenue, for the support of his majesty's government; and are always granted for two years certain, beginning and ending on the 25th of December; and so far as they are granted without special appropriation, they are granted to the crown under the same constitutional trust with the hereditary revenue.

Appropriated
duties.

III. The last head of the publick revenue are the appropriated duties; which are imposed for certain particular purposes, to which they are specially applied by parliament at the time of granting them; and those appropriations, at present subsisting, are, the loan, the tillage, the linen manufacture, the Dundalk cambrick manufacture, the protestant charter schools, and the Lagan navigation.

Paid as the
others into
the treasury.

And these duties are paid into the treasury as all the others are; but it is only for convenience; they are separately accounted for, and issued by different warrants; being paid, according to the directions of the several acts of parliament, to the orders, or on the receipts of the corporations, or private persons respectively interested therein, without any warrant signed by the government.

C H A P. IV.

OF THE KING'S RENTS IN IRELAND, AND THE
ANCIENT AND PRESENT METHOD OF
COLLECTING THEM.

THERE are four several sorts of rents in Ireland reserved and payable to the King, to wit, CROWN RENTS, PORT-CORN RENTS, COMPOSITION RENTS, and QUIT RENTS.

Rents payable
to the King,
different kinds
of.

The Crown rents are ancient rents reserved upon grants made by the Crown of their demefne lands, and lands of inheritance.

Crown rents;
what.

And the greater part of these rents, at this day, arise upon grants made of the lands, tenements, hereditaments, &c. which formerly belonged to monasteries, abbeyes, priories, and other religious houses, which, in the reign of King Henry the VIIIth, were either dissolved, suppressed, renounced, relinquished, or surrendered to his Majesty; and which, together with the scites, ambits, circuits, and precincts thereof, and all the lands, tenements, hereditaments and appurtenances thereunto belonging, were afterwards, by two several acts of parliament, 28 Hen. 8. cap. 16. and 33 Hen. 8. cap. 5. given to, vested in, and adjudged to be in the very actual and real seisin and possession of his Majesty, his heirs and successors for ever; in as large and ample manner and form as the then late abbots, priors, commanders, and other governors of the said religious houses had held and enjoyed the same; together

Out of what
they arose.

gether with all and every the rents, services, and rent-seeke, and all other services and suits which were due, to be paid, or done to any person or persons from, or out of the premisses, or any part thereof.

Other Crown rents.

And the rents reserved on all grants from the Crown, of fairs, markets, ferries, and fisheries, are called also Crown rents.

Rents on grants in pursuance of the commissions of grace called Crown rents.

The rents reserved on the grants of the six escheated counties * in the province of Ulster, are also called Crown rents, and are entered as such in the King's rent rolls.

* There were six counties escheated or forfeited to the Crown, on the rebellion of the earl of Tyrone and others, to wit, Donegal, Tyrone, Derry, Fermanagh, Cavan, and Armagh. These six counties were planted with great judgment by King James the First, on a plan formed by Lord Chancellor Bacon, but much improved by Sir Arthur Chichester, afterwards Baron of Belfast, and Lord Deputy of Ireland, and who might be said to be the real proprietor. On this plan the lands which were to be assigned for planting, were to be so assigned either to the old chieftains, or inhabitants, or servitors of the Crown, (who were the great officers of state, or captains and officers in the army) or else to English and Scotch undertakers; and different allotments were made to each of these, and encouragement given to them all, but especially to the first, to gain their good-will.

The lands to be planted were divided into three proportions, the greatest, of 2000 English acres, the middle, of 1500, and the least, of 1000; each and every county was set out into these proportions; the one half of it assigned to the smallest, and the other half divided between the other two proportions.

And these estates were granted by the King to these several persons to be held by them and their heirs; the undertakers of 2000 acres held of him in capite; those of 1500 by knights service; and those of 1000 in common socage. See Carte's life of the Duke of Ormond, vol. 1. pag. 14, 15, 16; as to what obligations each of these were under as to building, planting, with freeholders, &c.

On these donations of lands the following rents were reserved to the Crown, viz. upon every 1000 acres (after three years exemption, and three years at half rent) a rent of 5l. 6s. 8d. from the undertakers and such servitors as planted with British tenants; of 8l. from servitors that planted with the Irish; and of 10l. 13s. 4d. from the natives, who were not obliged to build castles.

And

And the yearly amount of the said Crown rents is about £14800 a year.

Crown rents.
14800l. a
year.

The Port-corn rent was a kind of rent formerly paid by many of the tenants to the monasteries and abbeys before their dissolution, as aforefaid, by service, or in kind, by *port-corn*, or marts, or by rendering of corn, and other produce of the lands. And it is called *port*, from *porto* to carry, or, *quia ad portam monasterii jacebatur*. And the species of corn so reserved, are wheat, bere, malt, and oatmeal; but in one grant beeves are reserved.

Port-corn
rent, what
and from
whence it
arises.

And in several of the grants so made by the Crown, after the dissolution of the said religious houses, and especially of rectories and tythes, and other the spiritual possessions thereof, this port-corn rent has been reserved, as well as the Crown rent, or rent in money.

Reserved by
the Crown in
several grants,
together with
a Crown rent.

And all these port-corn rents, which amount to about £400 a year, were, shortly after the dissolution of the abbeys, &c. given by the Crown to the Lord Lieutenant, and to certain other great officers in Ireland, to wit, the Master of the rolls, the Lord Chief Justice and the Lord Chief Baron, and the Presidents of Munster and Conaught; and they were accordingly put upon the establishment for the same, in the 42d year of the reign of queen Elizabeth; as appears by the rolls in the office of his Majesty's Auditor general, (where those allotted to the Lord Lieutenant are under the title, *sword*) and are saved and confirmed to them by the act of settlement in the following words;

Granted to
the Lord
Lieutenant
and other
great officers.

" Provided that neither this act, nor any thing therein
" contained, shall extend to the disposing or altering of any

Reserved by
the act of
settlement to

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" impropriate

the Lord
Lieutenant or
other Chief
Governor,
&c. in right
of their places.

“impropriate rectories, or tythes, or rents, now, or lately
“enjoyed or possessed by, or settled on, the Lord Lieute-
“nant or other Chief Governor or Governors of this
“kingdom for the time being, or which at any time have
“been, or are now enjoyed, possessed, or received by the
“Lords Presidents of Munster and Conaught in right of
“their respective places, any thing in this act to the con-
“trary in any wise notwithstanding.

“And that the Lord Chief Justice of his Majesty’s court
“of King’s bench, the Lord Chief Baron of his Majesty’s
“court of Exchequer, and the Master of the rolls, or any
“other of his Majesty’s officers of this kingdom for the
“time being, shall and may have and receive such port-
“corn of the several rectories which formerly have been
“paid and reserved.”

To be ren-
dered by the
grants.

And by the aforesaid grants, the said port-corn is to be
rendered at the principal town in the county named in the
patent, on or before the 2d day of February in every year,
to such person or persons as the Lord Lieutenant or other
Chief Governor or Governors of the said kingdom of Ire-
land for the time being, shall, from time to time, appoint
to receive the same.

And what
the incum-
bent or other
proprietor
may, on ren-
dering it, de-
falk or retain.

But in the said grants there is usually a clause or proviso,
empowering the incumbent, or other proprietors of the spi-
ritual possessions thereby granted, on their producing a
bill to the Vice treasurer, or Receiver general for the time
being, testifying the delivery of the grain, &c. to defalk
or retain in their hands, for the said grain, two shillings a
peck (*modius*), lawful money of Ireland. And by constats
from the rent rolls of queen Elizabeth in the Auditor ge-
neral’s office, the number of pecks charged on each deno-
mination,

mination, are mentioned; and they are valued at a certain sum for each peck, as if such sum was to be received in lieu of the port-corn; and the sum at which the said pecks, payable out of each denomination, are valued, is the same sum; which, by the said grants, was to be so defalked for the port-corn, delivered for such denomination, out of the Crown rent thereof.

The said state officers being so entitled, they usually farmed out the said port-corn to certain farmers, at a certain yearly rent, said to be £200.

But such farmers having used great severities and exactions to the incumbents and proprietors of the spiritual livings, a doubt arose, when the said port-corn had not been delivered in kind at the times and places appointed by the grants, but had been satisfied in money or otherwise by agreement with the Chief Governors for the time being, as was usually the case, whether the incumbents or proprietors of the said spiritual livings were entitled to defalk any sum in their hands by virtue of the said grants, although they should bring a bill or note from the persons entitled to the said port-corn, or the farmers thereof, to the Vice treasurer or Receiver general, if in truth the said corn had not been actually delivered according to the grants, but satisfaction by agreement had been made for the same.

Severities
used by the
farmers
thereof.

And complaints having been made of the said exactions and severities, in order to remove all such complaints and grievances, it was mutually agreed upon,

and a * deed executed in pursuance thereof, bearing date the 7th day of March 1698-9, between their excellencies the Lord Duke of Bolton, and the Earl of Galway, the then Lords Justices of this kingdom for themselves, and as far as they could, for the Chief Governors that should be thereafter on the one part, and by Dr. John Bolton for himself and the other incumbents or proprietors of the said rectories, (he being by letter of attorney lawfully empowered so to do,) on the other part, that for the year ending the second of February then last, the said incumbents or proprietors should pay for the said port-corn, to the said Lords Justices, the sum of 5s. 6d. for every *modius grani* reserved by the said patent, amounting in the whole to 269l. 18s. 3d. as in the schedule thereunto annexed is expressed; and for every year after, at or before the second of February in each year, five shillings per peck, which amounted unto 245l. 7s. 6d. per annum: And it was also further agreed, on behalf of the several then incumbents, or that should be thereafter, and the proprietors of the said rectories, that none of them should ask, demand, or defalk any allowance on account of the said corn, or by virtue or colour of their said several patents, but should pay the several yearly rents payable to the crown, as aforesaid, out of the said rectories, without any defalcation or deduction whatsoever, saving never-

* The rolls office, Auditor general's office, and council chamber, have been searched for this agreement, but it is not be found; but it is entered in a book in the Auditor general's office. But in the year 1761, these matters having been laid before the Attorney general, and others of his Majesty's council, they were of opinion that the Lord Lieutenant, or his farmers cannot sue for the rents on the agreement of 1698; but that the proceedings must be in pursuance of the grants, and for the port corn; and that, tho' the port-corn payable by the proprietors, is by the establishment assigned to several great officers, yet that it still remained payable to the King, and that the process must issue in his Majesty's name, for the recovery of any arrears that may be due thereon.

theless, all their right and title to the said allowance of eighteen pence per peck, as in their respective grants and patents are reserved and expressed, in case the said agreement should at any time thereafter be broken or made void.

And this port-corn may be recovered as others his majesty's rents, (which see hereafter,) to wit by distress, seizure, or information. And, in all the grants thereof there is a clause, that if the same shall be in arrear, the King, his heirs and successors, may re-enter and take the issues and profits thereof, to his and their own use, until the said arrear shall be fully satisfied; and then, and not before, the tenants of the aforesaid spiritual tenures to be restored to the possession thereof.

How recover-
able.

But by the King's letter bearing date the 20th of April 1763, it was directed that the rents usually accruing to the Chief Governor or Governors of Ireland for the port-corn throughout Ireland, should be no longer paid to the said Chief Governor or Governors for their use, but to the Commissioners of his Majesty's revenue from time to time, for the use of his Majesty, his heirs and successors. And by the government's warrant dated the 1st. of July, in the same year, his Majesty's Auditor general was required to make out one or more particular or particulars of the said rents, and to put the same in charge upon his Majesty's rent rolls, and to make a return thereof to the said commissioners in order to be collected by their officers, in like manner as his Majesty's other rents are collected.

Now paid to
the commissi-
oners of the
revenue.

And the Auditor general thereupon returned several constats of charges of port-corn, which appeared to have been

been taken from a rent-roll thereof, made in the reign of Queen Elizabeth; which rent-roll is now the only evidence of such rent, where the denominations have not been granted away by the crown.

Composition
rents, what

The Composition rents are certain rents reserved to the crown upon a composition made in the reign of Queen Elizabeth, between her majesty and the lords and chieftains of Conaught, in lieu of cesses, impresses, and quarterage of soldiers.

And how
they arose.

And the original of these composition rents was in this manner. Several lands in the province of Conaught and Munster, and other countries in this kingdom, formerly held by Irish custom, and not by tenure, according to English laws, were charged with heavy cesses and taxes, and subject to the depredations of men of war; wherefore, at the first quieting and settling those parts under the English government, the lords and chieftains of the said provinces and countries petitioned her Majesty, by her then Lord deputy, to accept from them the surrender of all their lordships, manors, lands, tenements, and other their possessions, to the end it might please her Highness, after the said surrender so made, to grant to them the same their lands and possessions, to hold of her Highness, her heirs and successors, by such tenures, rents, services, and attendance as should be thought meet and convenient, respecting the quantity and quality of the said lands, &c.

Act to enable
the crown to
make grants
of the lands
accordingly.

And accordingly an act of parliament was made, in the 12th year of the reign of her said majesty Queen Elizabeth, by which it was enacted, that patents should be made out to such persons, as should surrender to the
Crown

Crown their lands, so held by Irish custom, to be holden of her Majesty, her heirs and successors, for such estate, and by such tenure, rents, and services, as should be expressed and reserved in the said letters patent.

And afterwards in the 27th year of the said reign, a commission issued giving authority to sir Richard Bingham then governor of Conaught, and twenty-one other Commissioners to make a composition between the Queen and the lords and their tenants of that country, and of Thomond, for a rent certain to be paid out of every quarter of land therein, in lieu of all manner of uncertain cesses, cuttings, and other exactions, accustomed to be borne to the Queen and her predecessors for the martial government thereof; and further the Commission empowered them to do all things as to their discretion should seem best, as well in the said composition, as in the divisions of baronies into manors, and to advise all other things that should tend to the general good and quiet of the country, and the good subjects of the same.

Commission
to make a
composition,
between Q.
Eliz. and the
lords of Co-
naught and
their tenants.

And accordingly, indentures bipartite were entered into on the 2d of September following, whereby it appears, 1st. that the Lord Deputy Perrot did covenant on behalf of the Queen, that the chieftains, gentlemen, freeholders, and inhabitants, their heirs and assigns, should from the date of the said indenture be exonerated for ever from all cesses, exactions, cuttings, impositions, purveying, catings, finding or bearing of soldiers, and from all other burdens, other than the rents, reservations and charges in the indentures specified, and to be enacted in parliament. In consideration whereof, the said chieftains, gentlemen, freeholders, and inhabitants did grant to the said Lord Deputy and his heirs, to the use of the Queen, her heirs
and

Indentures of
composition,
in pursuance
thereof.

and successors, a yearly rent charge of ten shillings sterling out of every quarter of land within that province. 2dly. they agreed not only to answer for ever to all hostings, roads, and journies within Conaught, where and when they should have notice from the government, 50 able well armed footmen, upon their own charges, besides the rent aforesaid; and to all general hostings proclaimed within the realm, 20 well armed footmen, furnished with carriages and victuals, at their own costs, during the time of the said general hosting, if the government require it. 3dly. That the styles and titles of captainships and taniotships, and all other Irish jurisdictions, together with all elections and customary divisions of lands, should be abolished, and that the lands and inheritance should lineally descend according to the course of common law. 4thly. That the chieftains, gentlemen, and inhabitants, should by letters patent have diverse lands in the indentures specified to them and their heirs, free from the composition, to be held by common knight service. And that they should have all goods and chattels of felons, and other casualties and amerciaments.

Errors in
them.

Letter of King
James I. to
hold a com-
mission of
grace.

But it being afterwards found, that there were various errors and defects in the said indentures of composition, and many erroneous proceedings in the execution thereof, in order to rectify these errors, and to remove all doubts concerning the aforesaid composition, and the non-performance thereof, and to remedy all the defects which might be in the several titles which were derived under the said composition, his Majesty King James I. by his letter dated 21st. July 1615, empowered surrenders to be taken from the said inhabitants, and gave the following directions;

First,

“ 1st, To inquire by commissions, what quantity of
 “ lands every of the said inhabitants were seized of, and
 “ upon return thereof, to accept surrenders of so much
 “ thereof as the said persons should offer to surrender, and
 “ to cause letters patent to be made thereof, with a
 “ reservation to the King, and his successors, of the said
 “ composition royal mentioned in the indentures of Queen
 “ Elizabeth, and such other rents and duties as were then
 “ answered to the King, to be holden by common knights
 “ service, with a clause that no mention should be made
 “ of the surrenders.

“ 2dly, That in the said grants should be contained
 “ several pardons and grants of their several intrusions,
 “ fines for alienations without license, mesne profits,
 “ reliefs, sums for respite of homage, concealed wardships;
 “ or that the deputy give them such other effectual dis-
 “ charges as should free them and their heirs from all
 “ future trouble in any of the King's courts; with a
 “ proviso, that they should first make some moderate
 “ composition for their said several intrusions with such
 “ patentees, or their assigns, to whom any grant had
 “ been made of the same; the fourth part of which
 “ composition was to be reserved to the King”. And
 afterwards several surrenders were made and letters
 patent granted in pursuance of the said letter.

But towards the end of the reign of King James I. it
 being discovered that neither the surrenders or patents
 which had been so made and passed, had been enrolled in
 Chancery, by which means the title of the patentees be-
 came defective, and the lands were supposed to remain
 still vested in the Crown, the King proposed to make a

New defects
 and omis-
 sions disco-
 vered.

plantation there, as had been done in Ulster; though the omission was not so much the wilful default of the patentees as the neglect of the officers, to whom they had paid near £2000 for the enrolments of the patents, which were never made.

New composition between king Charles I. and the patentees.

But King James died before he could complete this scheme. And in the third year of the reign of his successor Charles I. a treaty was set on foot and concluded between him and the patentees, by which, in consideration of a sum of £120,000, agreed upon to be paid by them to his Majesty in gales, they were admitted to enrol the surrenders and patents made to them; and such as had a mind to make new surrenders, were to have the same accepted and enrolled, and new patents passed to them. And for their further security, their several estates were to be confirmed to them and their heirs by the next parliament, to be held in the kingdom.

And the patents confirmed by act of parliament.

And several acts of parliament were afterwards, though not without much difficulty and opposition through the arbitrary councils of Lord Strafford, made in this kingdom, for the purpose of confirming patents passed for those and other lands, under commissions of grace, as they were called.

How these rents are in charge in the King's books.

And the aforesaid composition rents are in charge in the King's rent rolls as follow, to wit, for every quarter part of a town land, 10s. And for every cartron, 2s. 6d. But I do not find that it was ascertained what number of acres any of the said denominations should contain.

There

There were also other composition rents which depended on a composition made by the Lords of the pale, and the inhabitants of the province of Munster, with Sir William Fitzwilliams, who was also Lord Deputy here in the reign of queen Elizabeth, after Sir John Perrot; but there does not at this day appear any distinct account of these rents; and it is imagined they have passed under the denomination of quit rents.

Other composition rents

And the amount of these composition rents is about £1000 a year.

Composition rents 1000l. a year.

Quit rent is a rent which arose and was induced in this kingdom after the rebellion in 1641, by the acts of settlement and explanation. And it is an acreable rent, according to the English statute measure, reserved upon all the estates in Ireland, which were forfeited by that rebellion, and granted by the Crown to adventurers, soldiers, and debenturers; and on lands which were then seized, and afterwards restored to innocent papists by decrees and certificates; or on lands given to them as reprisals; or to transplanters.

Quit rents, what, and when and how induced.

And the rates according to which these rents were reserved were as follow, viz.

					l.	s.	d.
For every acre in	{	Leinster	-	-	-	0	0 3
		Munster	-	-	-	0	0 2½
		Ulster	-	-	-	0	0 2
		Conaught	-	-	-	0	0 1½

And the yearly amount of these quit rents is about £50840.

Amount of quit rents.

The King's
rents to be
paid to the
collectors of
the revenue.

These rents are paid to the several collectors of his Majesty's revenue, whose receipts, by 9 W. 3, 31. are good and valid in law against the Crown, and as effectual, to all intents and purposes, as an Exchequer acquittance duly passed and entered in the several offices of the Exchequer.

Collectors to
give receipts
for all pay-
ments, &c.
and their fees.

And the collectors are thereby required, upon payment of any part thereof, to give to the person so paying the same, a full receipt or acquittance for what he shall receive, in parchment under his hand, wherein he shall mention the sum so by him received, and for what gales rent, and for what land, and on what account the same is paid to him; for which acquittance they are to receive, for any sum above five shillings, and not exceeding twenty shillings, sixpence; and for every sum above twenty shillings, and not exceeding five pounds, one shilling; and for every sum above five pounds, and not exceeding fifteen pounds, one shilling and sixpence; and for every sum above fifteen pounds, two shillings; and in no case to receive any more for one acquittance than two shillings.

Persons
charged with
several dis-
tinct sums in
respect of se-
veral parcels
of lands to
have one ac-
quittance
only.

And by Sect. 4, where one person stands charged with the payment of several and distinct sums, in respect of several parcels of lands, or where the same is in charge in the name of other persons, not in possession of such lands, the several collectors are thereby required, on receipt of the said rents, or any part thereof, to give to the person in possession and paying the same, one acquittance for what he shall pay; which acquittance shall distinctly mention as well the lands and tenements, as the rent paid, and for what gale the same is paid, and by whom; for which one ac-
quittance

quittance the collectors are to receive no greater fee than as aforesaid.

By stat. 11 Wil. III. ch. 2. Eng. the forfeited estates in Ireland shall, after sale thereof, be subject to such crown rents, quit rents and chiefries, as the same were liable to on the 13th of February 1688.

Forfeited estates in Ireland, after sale, liable to such quit, &c. rents as they were before 13th Feb. 1688.

But it is thereby provided that nothing therein contained shall make void any grant of any quit rent, or other rents, made in consideration of any just debts released to the crown, to the full value of such grant; or make void any grant for reduction, or abatement of any quit rent, where the same abatement hath been made in consideration of the barrenness or coarseness of any lands out of which the same is issuing, or for the better improvement thereof.

Not to extend to make void any grant of quit or other rent made in consideration of any just debts released to the Crown.

By 1st Ann. stat. 2. ch. 21. Eng. The trustees for forfeited estates, or any seven of them, with the consent of three of the Commissioners of the revenue in Ireland, may apportion any quit rent, crown rent, or composition rent, payable to the Crown, and charge the same in parcels upon the lands liable thereunto, so that every part sold by itself, having regard to its quantity and value, may be liable to a certain proportion of the said rents; which apportionment, set down under the hands and seals of the said trustees, &c. and Commissioners, &c. and enrolled in the Exchequer in Ireland, shall be good in law, and be reserved to her Majesty, &c. in the purchase deed; and the premises sold discharged from the rest of the

Trustees of forfeited estates in Ireland to apportion quit and other rents of the same parcels &c.

the said rents, and shall be liable to the said reserved rent in the same manner as it was before to the whole rent. And if the trustees and Commissioners shall not agree in the said apportionments, before the 24th of May 1703, or shall sooner disagree in them, the Chief Governor of the said kingdom may make the like apportionment, which shall be of the same force as if made as aforesaid *.

Arrears from
25th March
1692 to 25th
March 1695
discharged.

By stat. 9. Wil. III. ch. 29. and 2. Ann. ch. 4. the several arrears of quit rent out of lands, &c. returned to have been waste from the 25th of March 1692, to the 25th of March 1695, are discharged, &c.

Plus acres
what, in
whom vested
and to what
quit rent lia-
ble.

By stat. 2. Ann. ch. 8. the lands called plus lands, or plus acres, which are parcels of denominations of

* On the plan of this power in the trustees of apportioning rents, which expired as is above mentioned on the 24th of May 1703, the court of Exchequer have since proceeded in the apportioning of rents; but always with a *salvo jure coronæ*.

But for this purpose, a petition is to be preferred to the court, verified by affidavit, (notice being first given to the solicitor for the King's rents,) who refer it to the Auditor general, and this order of reference is to be served on all the parties concerned; and when the Auditor general has apportioned the rents, his report thereon will, on motion of counsel, be referred by the court to the Attorney general, (notice being first given to the solicitor for the King's rents as aforesaid,) who is also to make his report, which is generally a transcript of the Auditor's report; and upon his report an order is to be obtained for confirming it, unless cause, which order is to be served on all the other proprietors of the lands; and if no cause be shown to the contrary, on affidavit of such service, and certificate from the second Remembrancer of no cause, and counsel's motion thereon, the report of the Attorney general is confirmed absolutely. And note, cause may be shown either on affidavit, notice and motion, or by exceptions to the report, which are to be set down to be argued, as in other cases of exceptions to his report. See the case of his majesty against Nutley, 30 June 1731. Same against Daly, 11th December 1731, against Morgan, 31st May 1745, and against Rielly, Hill. 1748.

lands

lands undisposed of, where the residue of such denominations have been granted by patent, are vested in such persons, who on the 1st day of October 1702, were in possession of such plus acres by themselves or those deriving under them, in their right, or under colour thereof; which persons shall hold and enjoy such plus acres to them and their heirs, liable to such quit rent for the same *pro rata*, as is payable out of the other part of such denominations.

And by the said act, reciting that there were several denominations of land entirely undisposed, which, as also some of the aforesaid plus acres, were so coarse and barren that they were not worth the quit rent they were liable unto, and therefore remained desolate, it is made lawful for the Chief Governors and six more of the privy council to demise or grant the same to such protestants, and for such term of years, as they shall think fit, at such a reasonable rent as may encourage such persons to plant and inhabit the same.

Undisposed
lands and plus
acres coarse
and barren,
how to be
disposed of.

But it is thereby provided that nothing therein contained shall avoid any settlement, lease, charge, or other conveyance, or encumbrance made by the persons whose estates or possessions are thereby confirmed, or by the persons under whom they derive; but that the same and all other rights and titles, except of her Majesty, to the said lands, shall be of the same effect as if the said act had never been made.

Rents are usually put in charge two ways; to wit, by the Auditor general, *ex officio*, from the King's grant; or by the court of Exchequer upon a *scire facias* on behalf of the Crown.

Rents put in
charge two
ways.

In

By the Auditor general, *ex officio*, from the King's grant.

In the first case, where inquisitions have been taken either by special commission, or by the escheator *ex officio*, and a particular thereof made out by the Surveyor general and Auditor general, a *fiat* is then prepared by the Attorney or Solicitor general for the patent or grant of the lands; which *fiat* is to be lodged in the rolls office; and when the grant is sealed and enrolled, it is not given directly to the party concerned, but brought, by one of the clerks in the rolls office, to the Auditor general, to be by him entered, who from thence ascertains the rent, and inserts the same in the roll of the King's rents; and the grant is then delivered to the party.

Or on a *scire facias* for his Majesty.

But where any old rent is to be put into charge, which hath not before been in charge in the King's rent roll, or where there is any difficulty with regard to the right, so that it may be necessary that evidences and proofs be produced for the determining thereof, in such cases the proper method of proceeding is to sue a *scire facias* for his Majesty, directed to the sheriff of the county where the lands lie, to give notice to the party to answer the charge thereon*.

The proceedings on such *scire facias*.

And the appearance to this *scire facias* is to be entered in the rule book in the second remembrancer's office, from whence this writ is to issue. And on this *scire facias* rules to plead are to be entered, and such proceedings had, as on *scire facias*'s on recognizances to the King.

* So determined in the case of his Majesty against John Daly, in this court, Hillary term, 1752. And in the case of his Majesty against O'Brien, afterwards Earl of Thomond, in Hillary term, 1758, after many proceedings had been for several years in each case, on the Attorney general's report and exceptions thereto.

It has often happened that the same lands have been granted by patent to different persons; in which case, if it were upon the acts of settlement and explanation, the lands were adjudged to the patentee who had the prior certificate; but yet as these lands were often mixed with other denominations in the same patent, the patentee, who did not enjoy the lands so doubly granted, was nevertheless liable, as to his other lands, to the rent reserved upon the lands which he did not possess.

Disclaimer,
in what cases.

In all cases of this sort the grantee of the lands is to file a plea of disclaimer in the second remembrancer's office, wherein he is to set forth his title to the lands in the grant which he doth possess, and then to disclaim the lands which he doth not possess; and to this plea the Attorney general is to file a confession; and thereupon the court will give judgment for exonerating the defendant, and the lands of which he is seized, from the rents so charged upon the lands he hath disclaimed; and this judgment is accordingly made up and enrolled among the records of the said office.

and how.

As to over charges and double charges * which have happened in several cases, as where more acres have been

Over charges
and double
charges in fe-
veral cases.

* In the year 1758, it appearing to the commissioners of the revenue that several lands had, for many years, been returned by the several collectors of the kingdom, in their lists of arrears, as double charges, and that several persons had, from time to time, been grievously vexed by distresses and otherwise for the same, on the 11th of July in the same year an order of the board was made, that the solicitor for the King's rents should cause all the said double charges to be discharged and struck out of the rent rolls at the expense of the Crown, and without any expense to the subject; which was accordingly done on constats thereof from the Auditor general, the consent of the Attorney general, and on motion thereon, by the solicitor for the King's rents without any other or further proceeding.

The proceedings to discharge them by petition.

distributed and granted, than the lands forfeited, by the survey and distribution book, appear to contain; or where there have been two grants at different times to the same person, or those deriving under him, of the same lands, and the rents reserved on each are both continued in charge, whereas the last rent only ought to be charged; or where the same lands are charged in two districts, or charged twice in the rent roll; or where part of the lands lie in one barony and part in another, but being in different districts are charged in the rent rolls in both; or where a person apprehends that the Crown has not a right to any rent with which his lands are charged, or that the lands are not liable thereto; in such and the like cases the party so charged may, as well before as after any distress or other proceeding is taken for the recovery thereof, move the court by counsel on a petition setting forth the facts, (which are usually verified by affidavit) that it may be referred to the Auditor general to report thereon; and the court will make an order for that purpose, with a respite of proceedings in the mean time: but the usual notice of this motion is to be given to the solicitor for the King's rents. Then an attested copy of the order is to be brought to the Auditor general, who thereupon will, if required, issue summonses for attendances on him, and proceed to make his report.

And the Auditor's report referred to the Attorney general.

And when the Auditor general has made his report, the party, in whose favour it is, may move the court by his counsel that the Auditor's report may be referred to the Attorney general, who makes his report thereon, which is usually *totidem verbis* with the report of the Auditor general *, (for which his fee is two guineas); then a motion

* Of late the Attorney general examines into the matters contained in the report of the Auditor general, in presence of the solicitor for the Crown and the attorney for the petitioning party, and varies the Auditor's report as he sees fit.

may

may be made by counsel, without notice, to confirm the Attorney general's report; and the court will make an order for that purpose, unless cause be shown to the contrary in four days after service of the order. And if no cause be shown in these four days, the court, on certificate thereof and affidavit of the service of the order, will on counsel's motion make the order absolute, and confirm the report. And if the report be in favour of the subject, the court will also order the rent and arrears to be struck out of charge; and if a distress be taken, or securities or money lodged in the hands of the collector or other person, they will order them to be restored to the party.

And either party may, if he thinks himself aggrieved by the report made by the Attorney general, take exceptions thereto; and these exceptions are to be set down as a cause, and argued in court by the counsel for the Crown and party; but no exceptions are to be taken to the report of the Auditor general, as his report must be referred to the Attorney general*.

Exceptions may be taken to the Attorney general's report, but not to that of the Auditor general.

But if it be a matter of great nicety and difficulty, the court will not determine it upon these exceptions; but will leave the party to be relieved by *traverse*, *scire facias*, &c. according to the circumstances of the case. See the case of his Majesty against the tithes of Jerpoint in this court, Trinity Term 1749, where in such case a *traverse* was granted to the subject, although the King was in possession by virtue of an injunction on a custodiam, on giving security by recognizance to be answerable for the possession and mesne rates, if adjudged against the

* So determined in the case of his Majesty against the right honourable Percy Wyndham O'Brien afterwards earl of Thomond, in Hill. Term 1758.

traverser, &c. and afterwards an *amoveas manus* was granted.

Petitions to the Exchequer for discharge of arrears of quit, &c. rents, where none have been paid for 20 years before, &c.

By stat. 3 Geo. III. ch. 22. It is made lawful for every person, bodies politick and corporate, at any time before the 25th day of March 1770, to prefer their petitions to his Majesty's court of Exchequer, thereby setting forth, that all or some of the lands, rectory, abbey, priory, or monastery lands, tithes, fairs, tenements and hereditaments whereof they are seized, are subject or liable to some certain quit rent, crown rent, composition rent, or other chief rent, payable to his Majesty, which hath not been paid by them, or those under whom they respectively derive, for 20 years next immediately preceding the 29th day of September 1764, particularly describing, in such petition, the lands liable to the payment thereof, as well by their present as former names and denominations, and thereby submitting to pay all such annual quit rent, crown rent, composition rent, or other chief rent, as shall become due after the said 29th day of September, and praying to have such lands discharged from all arrears of such rent incurred, due before the said 29th day of September 1764; on which petition an order shall be made by the court, that the Auditor general shall search into the respective rent rolls, books and records in his office, and shall certify to the court, by a certain day to be appointed by the said court, whether any such rents, as are mentioned in such petitions, have been accounted for to his Majesty or his predecessors, within the space of twenty years next preceding the said 29th of September, 1764.

And the Auditor general is thereby required to certify to the court, whether it appears to him that such rents have

have been paid or accounted for to his Majesty or his predecessors, within the space of 20 years next before the 29th day of September 1764; for which search two shillings and six pence and no more, and for which certificate six shillings and eight pence and no more, and for entry of a discharge of such arrears out of the rent rolls three shillings and four pence and no more, shall be paid to the said Auditor general.

And if upon return of such certificate, and upon examining into the truth of the allegations of such petition, by the court, in a summary way, it shall appear to the court that the allegations contained in such petition are true, or if it shall appear that no quit rent, crown rent, composition rent, or other chief rent payable to his Majesty, has been paid for or out of such lands, or has been accounted for to the collectors of his Majesty's revenue, for the district wherein such lands lie, within the term of 20 years next before the 29th day of September, 1764, in such case the court is by said act required to make an order on such petition, that the lands therein mentioned and the persons who from time to time respectively held and enjoyed the same, shall be absolutely freed and discharged of and from all such rents and arrears due or in arrear at any time before the said 29th day of September, 1764; and shall order the said Auditor general to give in charge such growing rents as the said lands shall appear to be charged or chargeable with, which shall become due from and after the said 29th day of September, 1764, to the collectors of the districts where such lands lie, to the intent that the same may be duly collected for the future; and such order shall be an effectual discharge against his Majesty, as to such publick arrears.

The

Old method
of collecting
the king's
rents.

The old method of collecting these rents antecedent to the year 1693 * (at which time the establishment of the kingdom was settled) was thus ;

The patents on which these rents are reserved were originally, after they were enrolled, (as they are at this day) entered with the Auditor general of the Exchequer, who out of them made an abstract of the rent reserved, for what land, in what country, from whom, and of the date of the patent ; and these abstracts were reduced under the heads of the several counties where the principal denominations of lands, out of which the rents were reserved, lay.

By process of
the pipe to
the sheriff.

From this office a rent roll was twice a year transmitted, sometimes to the second remembrancer's office, sometimes to the clerk of the pipe ; which last office, twice a year, viz. at Michaelmas and Hillary terms, made out process to the respective sheriffs of the several counties in this kingdom for the collection of them.

Who ac-
counted for
them.

And the respective sheriffs for each county, once a year when they passed their accounts, accounted with the court of Exchequer for these rents ; and the whole rent roll for each county being in open court read over to the sheriff, he upon his oath gave his answer to each particular ; if received, he charged himself with it, which in the Exchequer language is called *Tot*, i. e. *totum in manibus* ; if not received, he gave his reasons upon oath why he

* The total amount of these rents at that time was £65052 16 3, out of which £4664 10 were to be deducted for several of the said rents granted to particular persons by K. Ja. II and K. Wil. and Q. Mary ; but they were afterwards made unalienable by the English act of 11 Wil. III. as is before mentioned.

could

could not collect it; which, if just, were allowed by the court; if not, the court charged the sheriff with it, and let him take a writ of assistance to collect it for himself.

The arrears were sent out again by writ or by process to the succeeding sheriff together with the rents of his time.

The sheriff took a *debet* of the balances due on his account from the clerk of the pipe, and thereupon paid the money into the treasury.

And took a debet from the clerk of the pipe, &c.

This method of collecting was afterwards thought inconvenient for the following reasons, viz.

This method inconvenient.

1st, The rents came in but once a year, the sheriffs not being to account oftener; and it was not convenient that so large a sum as £30,000 or upwards, which was the first half years rent after the establishment was settled, should lie in the hands of the several sheriffs of the kingdom until the year was out, when the King's occasions required it before.

The reasons why.

2dly, They were never well brought in by the sheriffs; for they not being able to collect them themselves but doing it by their bailiffs, several sums which were received were, either by neglect or out of design, not returned by the bailiffs as received; so that, the sheriff not charging himself with them on his account, the subject, on the renewal of the process, was forced to apply to the Exchequer for redress to his great expense.

3dly, Great arrears were found to be returned by the sheriffs, they either out of favour to particular persons,
or

or regard to persons of quality, neglecting to levy the rents from them.

4thly, Great sums lying in the hands of the sheriffs or sub-sheriffs until their accounts were passed, they were thereby tempted to spend or misapply the money, which proved often the ruin of themselves and their securities.

Besides the charge of issuing it in this method was inconvenient to the subject; for it generally happened that lands in several denominations, in distant places, sometimes in several counties, were passed in the same patent, and a certain yearly rent reserved to be issuing out of the whole; in which case, each parcel of land being by law liable to the whole rent, the Auditor general, in his rent roll or charge for the sheriffs collection, had given directions for demanding and levying the whole rent only on the principal denominations of land in the patent, no notice being therein taken of the other denominations which were in the hands of other persons and often in different counties; by which means the tenant of the principal denomination was forced to be at great trouble and expense to get in the proportions of the tenants of the other lands.

This being the general case was very mischievous, and not to be avoided but by apportioning the rent on each denomination of land in charge in the grant, and then issuing directions accordingly for the collecting from the particular tenants of each denomination their several portions, which was without prejudice to the King's remedy upon the whole, in case any particular parcel of land should become unable to discharge its portion of rent.

These

These are the reasons commonly given for changing the method of collecting by sheriffs; but these mischiefs might in a great measure have been remedied without altering the course. And there is one more which was thought to be of greater force, and the chief motive of changing the old officers for collecting and managing the revenue through most of its branches. In the year 1669 the whole revenue of this kingdom was set to farm to John Forth, of the city of London, alderman, and ten others, for seven years from the Christmas before, at several distinct yearly sums amounting in the whole to £219,500. As soon then as the farmers had got the receipt and management of the revenue into their hands, it was concluded, and with good reason, that officers who depended on them and the commissioners of the revenue for their offices, and who were liable to be removed on the least apprehension of neglect or other default in them, would be more strict and circumspect than such as had no dependance on them, and whose office was rather a burden to them without profit, as the sheriffs collection was; and who had legal estates by patent in their offices, and whom consequently the farmers and commissioners of the revenue could not control.

The principal reason for changing the old method of collection.

And therefore the whole kingdom was divided into several districts, according as the land lay in compass, for the ease and conveniency of the collection; the division by counties being unequal; some of them being of too great an extent for the collection, and some too small; and a particular collector was appointed for each district.

New method by dividing the kingdom into districts and appointing collectors.

And as the King received a certain rent from the farmers, and was not concerned how much the revenue
VOL. I. I produced,

A clerk of the quit rents and Accomptant general.

produced, the farmers were suffered to manage it their own way; who thereupon slighted the course of the Exchequer, and appointed their own officers; viz. a clerk of the quit rents, who made out the charge to the collectors, and an Accountant general, before whom these collectors were to account; both which served instead of the Auditor general. And these officers made out their charge, and settled their books by the records in the Auditor's office, of which the farmers, by their patents, were to have the inspection and use during their continuance.

Subsequent alterations in the rent roll not taken notice of by the Auditor.

But several alterations having been made in the quit rents, some upon commission for reducing them in several places where they were too high, and others upon orders from the Exchequer, the alterations were entered with the farmers clerk of the quit rents, but not with the Auditor, nor any notice taken of them in his book. Besides, the change in issuing of the charge from counties to districts, and the apportionment of the rents, made a vast alteration in the rent roll; so that by these means, at the end of the farms, the Auditor was not able to make out any charge for the collection of the quit rents, nor was there any certain rent roll or record for that part of the revenue, but it lay wholly in the breast of the clerk of the quit rents to the farmers, and his private books, on which there was no cheque.

After the revolution a new rent roll made.

It continued thus after the end of the farms until the revolution; but since that period the court of Exchequer, taking notice of the condition which that part of the revenue was in, thought it necessary that there should be a certain rent roll or record of the quit rents, to remain as a charge to the collectors, and a cheque to the persons concerned in the receiving the same; and did,
with

with the encouragement and assistance of the then government, out of the quit rent books and Auditors books, and by comparing them with the original patents, fix a certain and methodical rent roll of the quit rents, according to the present course of collection by districts, in the manner following viz.,

Under the head of each district are placed the particular counties; and under them the baronies, tenants names, denominations of land, the number of acres of the whole, and the apportioned rent of each denomination, with the reduced rents, if there be any * reducements, each in distinct columns.

In what manner.

The rent roll for each district, according to its form, issues out, once a year, to each collector, and is his charge; and he collects these rents, and gives an account to the commissioners of this and the other branches of the revenue, which he pays into the treasury, from time to time, as there is occasion. And between Lady

Which issues once a year to the collector.

* These reducements were, by virtue of a commission under the great seal of Ireland, directed to his Excellency, Arthur Earl of Essex, then Lord Lieutenant of Ireland, and others, bearing date the 25th June 1676, grounded on his Majesty's letter under his royal signet, dated at Whitehall the 3d of December 1675, whereby they were empowered to reduce and abate quit rents and arrears thereof, due out of coarse and barren lands in the Kingdom of Ireland, where the quit rent was equal to or near the yearly rent of the land. And these reducements were engrossed on rolls of parchment, and are in the Chief remembrancer's office, and are readily resorted to by means of the name of the person in whose favour the reduction was made; and other reducements were made several years before, by the Lords Justices of this Kingdom, by virtue of the King's letter, upon petitions of officers, soldiers, and others, to whom such coarse and barren lands had been set out. And the orders for these reducements are in the offices of the Auditor general and Surveyor general; and these matters were referred to these officers for their report, before the orders were conceived.

day in March, and Lammas in every year, the several collectors of the kingdom pass their accounts for the whole year, according to the time appointed by the commissioners for that purpose, in the manner herein after mentioned.

C H A P. V.

OF THE CUSTOMS, AND IMPORT EXCISE, AND ADDITIONAL DUTIES ON GOODS IMPORTED, AND EXPORTED, AND THE MANNER OF COLLECTING AND ACCOUNTING FOR THEM.

Customs,
what.

THE customs are the duties of *poundage* and *tunnage* on goods imported, and of *poundage* on goods exported.

Poundage old.
Davies 31.

Poundage is an ancient duty, payable to the crown on all merchandize and wares imported into or exported from this realm, to be sold; except wines and oils, which pay custom by way of tunnage. And this duty, which has been granted to the crown, by various acts of parliament, in England, from the reign of Edw. III. and mostly after the rate of twelve-pence in the pound, according to the several and respective values and rates of the merchandize, is said by Sir John Davies to have been first granted to King Hen. VII. in this kingdom in the 10th year of his reign for 5 years; and at the end of that term to him and his heirs for ever, after the rate aforesaid. And this is called the old poundage.

* The word custom, which is denominated in the ancient barbarous latin *custuma*, and not *consuetudo* (usage) seems to be derived from the french word *coustum*, or *coutum*, which signifies toll or tribute, and owes its own etymology to the word *coust*, which signifies price, charge, or *cost*. 1. Blackst. Com. c. 8.

And

And by the 14th and 15th Car. II. c. 9. another duty of 12 pence in the pound on all goods exported by merchants strangers, or other aliens, (except wines and oils) is granted to the King and his heirs; both said duties to be paid according to the several and particular rates and values of such merchandize, as they are respectively rated in the book of rates annexed to the said statute. And in case of importation or exportation of any goods not mentioned therein, the poundage is directed to be levied according to the true value, to be affirmed upon the oath of the merchant, in the presence of the customer, collector, comptroller, and surveyor, or any two of them.

But out of this duty of poundage on goods imported there is to be, by the 8th rule of the said act, an allowance of £5 per £100.

Allowance
out of it.

Tunnage is a duty payable by the said statute on wines and oils imported into this kingdom, viz.

Tunnage.

		l.	s.	d.
For every tun of French wine imported				
	by subjects,	3	10	0
	by strangers,	4	13	4
For every pipe or butt of Levant, Spanish, or Portugal wine,				
	by subjects,	2	10	0
	by strangers,	3	6	8
For every awme of Rhenish,				
	by subjects,	0	15	0
	by strangers,	1	0	0
For every tun of rape and linseed oil,				
	by subjects,	0	15	0
	by strangers,	1	0	0
For every tun of Spanish, &c. oil,				
	by subjects,	2	12	0
	by strangers,	3	5	0
				For

		l.	s.	d.
For every tun of fallet oil,	by subjects,	3	3	0
	by strangers,	3	18	9
For every tun of oil of Greenland,	by subjects,	0	8	0
	by strangers,	0	10	0
For every tun of oil of Newfoundland,	by subjects,	0	6	0
	by strangers,	0	7	6

Allowance
out of it for
leakage.

But out of this duty, there is to be by the 7th rule of the said act, an allowance of £10 per £100, for leakage on all wines imported; provided such wines have not been filled up on board the vessel.

Goods
wrecked not
liable to cus-
tom.
Vaugh. 159.
L. Raym. 388.
501.

It has been determined that goods shipped in foreign parts as merchandize, and wrecked on the coast, are not liable to the duties imposed by this act; as they could not be deemed imported within the meaning of it.

But goods
saved, not
being wreck-
ed, liable.

But by the 6 Geo. I. c. 8. all goods which shall be saved out of any vessel that shall happen to be forced on shore, or stranded on the wastes of this kingdom, not being wrecked goods, *jetsam*, *flotsam*, or *lagan*, shall after all charges of salvage, &c. be subject to the payment of custom as if imported.

Impost excise,
what.

The impost excise *, or new impost, is a duty of poundage granted by 14 and 15 Car. II. c. 8. to the King and his heirs, on all commodities, merchandizes, and manufactures imported, jewels, bullion, corn, arms, and ammunition

* So called from the Dutch word *accise*, which signifies an assessment upon a commodity; or from the word *excisum*, a part of the profit cut off from the whole. Gilb. Treat. of Exch. 252.

excepted)

excepted) according to the rates they are valued at in the book of rates annexed to the said statute, viz. for all sorts of **drugs** 2 shillings in the pound, for all sorts of raw **hemp**, undress'd flax, tow, rosin, pitch, wax, cable, cable yarn or cordage, 6 pence in the pound; for all wines, tobacco, salt, and other goods specified and valued in the said book of rates, one shilling in the pound; and for all other goods not specified or rated in the said book of rates, one shilling in the pound according to the book of rates for customs; and if omitted there, then as they shall be rated and valued by the sub-commissioner collector and searcher for excise in the place where imported, or according to the highest market price.

All which duties are to be paid by the first buyer before his receiving them from the merchant importer; unless the merchant be a shop-keeper, retailer, or one employing

To whom to
be paid.

* It is this imposition of the duty upon the buyer that constitutes the essential difference between custom and excise, properly speaking; the former being a tax immediately paid by the merchant, altho' ultimately by the consumer; the latter, an inland imposition paid either upon the consumption of the commodity, or upon the retail sale, which is the last stage before the consumption. And the excise is doubtless the most economical way of taxing the subject, and renders the commodity cheaper to the consumer; for this obvious reason, that the earlier any tax is laid on a commodity the heavier it falls upon the consumer in the end; because every trader, thro' whose hand it passes, must have profit, not only upon the commodity, but also upon the tax itself. But this good effect of the excise is not produced by this clause of the act which brings the duty one stage nearer the consumptioner; it being now generally paid in the first stage, or by the merchant importer, on the terms herein after mentioned. So that the distinction in this kingdom between the custom inwards and import excise answers no other purpose, than to make the collection of those customs much more intricate and complicated than it would be if they were both granted by one undistinguishing law, and levied in one manner, and by the same rate, under the general term of custom. And this distinction likewise furnished a strong objection against the late measure of dividing the boards of customs and excise; from the delay and additional expense which must arise to the merchants by the necessity of returning separate accounts to the two boards.

them

them for his own consumption; in which case the duties are to be paid by the importer, before he be permitted to carry the goods away from the custom house or place of landing.

And it is observable that wine pays custom by the measure, viz. by tunnage; but excise by value, viz. by poundage.

A bond to be given for it by the importer, and an account kept.

But the duty of excise not being payable until the goods are sold, a bond was by the act directed to be given by the merchant importer, conditioned not to deliver any of the goods to any of the buyers thereof, or to any shopkeeper or retailer whatsoever, till such time as the excise should be duly paid by such buyer &c. and an import account was kept according to the act.

But now an allowance made for prompt payment.

But this being found very inconvenient, on the 21st October 1679 an agreement was entered into between the then commissioners of the revenue (by virtue of a power in their patent so to do) and several merchants, by which, for prompt payment of the duties of excise, allowances of £10 per £100 in the excise and additional duties on wines and tobaccos, and of £6 per £100 on all * other goods imported, were given to the importer. And this agreement, though at first but for one year and for the benefit of the merchants only who signed it, being found to be of equal benefit to the crown and subject, became general by usage and is continued to this day.

To wholesale merchants only.

But none but wholesale merchants are entitled to these deductions or allowances. Retailers or consumptioners

* But coals, flates, coaches, and chariots have always been deemed retailed goods, and excluded from the benefit of the £6 per cent deduction.

are

are to pay down their excise, as the act directs, without any deduction.

And the merchants who are entitled to those allowances are generally well known. But where the merchant is not known, (if it be in the city of Dublin) he is to produce a certificate under the hands of several known merchants, which is first referred to the collector, who examines into the truth of it; and if on inquiry he finds the person qualified, he makes his report accordingly; and the commissioners make an order for allowing such person the benefit of an wholesale merchant.

How obtained
in Dublin.

But if this allowance be demanded in any of the districts in the country, a certificate is to be produced to the commissioners, signed by some of the principal merchants of the city or town in which the person claiming it resides, and also by the collector and surveyor of the districts; which certificate the commissioners refer to the examiner of the import excise; and on his report an order for the allowance is made out.

How in the
country.

But besides the aforefaid perpetual duties of custom and excise, there have been, from time to time, granted by parliament, and are now payable, various additional and temporary duties on several goods and merchandizes imported and exported; the principal of which are, those on tobacco, spirits, and wine imported. And these duties are collected and levied according to the act of excise, viz. may be bonded by wholesale merchants, or paid down in ready money with the same discount allowance.

Additional
duties on
goods im-
ported and
exported.

The collection of the ancient customs, antecedent to the aforefaid acts of customs and excise, was in this manner.

Ancient me-
thod of col-
lecting the
customs.

There were then in every port a customer, a comptroller, and a searcher; and these three officers took care of all goods imported or exported. They are mentioned in Cotton's records, 17 Edw. 3. fol. 38, &c. *.

Customer,
his duty.

The customer, who in Dublin port is called customer and collector, was the most ancient and at first the sole officer who was the collector of customs, and accountable for them to the King; 9 Hen. 6. 12 b. and 1 Hen. 7. 4 b. He was to make an entry of all goods and merchandizes imported or exported; to rate or tax the original bills of entry; to receive the customs; and to sign all warrants for the charging and discharging of goods. He was to charge himself upon oath, and to discharge himself by tallies of payment; and upon his appointment to his office he was to give security before the Chief Baron of the Exchequer, for his true accounting and answering his balance.

Comptroller,
his duty.

Then because the customer was accountable to the King, but could not be charged but by his own book of cockets or his oath, a comptroller was appointed as a check upon him; and his office was to rate another bill of entry of all goods imported and exported; to take an account in his

* These seem to be the ancient port officers, and hold their patents from the Crown; though by several old statutes they should only be made during pleasure. And notwithstanding the alteration which has been so made in the constitution, conduct, and management of the revenue of Ireland, yet these officers are continued in several parts of the kingdom, and have salaries on the civil establishment; to wit, there are in Dublin a customer, comptroller, and searcher; in Limerick, the like; in Waterford and Ross, the like; in Kinsale, the like; in Youghal and Dungannon, the like; in Drogheda, Dundalk, and Carlingford, the like; in Cork, a customer and a searcher; in Galway, the like; in Carrickfergus, the like; in Strangford, the like; in Wexford, a customer and a comptroller; in Killybeggs, the like; in Dingleicouch, the like.

book of the quantity and quality of all such goods, in the nature of the customer's entry; and to counter-sign all warrants for the charging and discharging of goods.

Afterwards, in aid of the customer, to find concealments and subtraction of customs and subsidies, and to seize all merchandizes forfeited, the searcher was appointed; who in his grant of office was also called packer and gauger. He anciently received the warrants and cockets from the customer and comptroller to unlade or lade the goods. When the merchant had paid his customs to the customer, he had a warrant from the customer and comptroller to land the goods; but if they were landed before the customs were paid or compounded for, the goods were forfeited, and the searcher was to make a seizure of them. If the goods were to be shipped outwards, the merchant went to the customer and comptroller and entered the goods, and paid the customs or agreed for the customs outwards, and when such payment or agreement was made, they received from such customer or comptroller a license to export such goods, which was called a cocket. He also viewed all the goods and examined the several species of them, to see if they agreed with the warrant of discharge, which he entered in his book.

Searcher,
his duty.

Lastly, to discover and prevent frauds in all these an officer called the supervisor was established, who is now called Surveyor general of the customs of the whole kingdom. And he has deputies under him in each port, whose business it is to survey and oversee, from time to time, all and every the customers, comptrollers, searchers, and other officers to be employed in the ports, creeks, and havens.

Surveyor,
Supervisor,
his duty.

in and about the collecting, comptrolling, and surveying the customs, subsidies, poundage, and impositions, and to see that they and every of them did, from time to time, well and truly perform and discharge their several duties in their said several offices, in due collections and payments of the said customs, &c. and in the keeping true books and records of the same; and in returning the said books every half year duly into the Exchequer, in Michaelmas and Easter term, and to the Auditors for the revenue; and to see that the said books and accounts of the profits thereby arising and growing due unto his Majesty were duly audited and certified in the said court of Exchequer; and to cause the said officers and every of them to do and perform all and every thing whatsoever appertaining to their said several and respective offices.

Ancient manner of accounting for the customs, by issuing port books yearly to the customers, &c.

And the manner of accounting for and paying in the ancient customs was thus. There issued yearly from the chief remembrancer's office parchment books, sealed with the seal of the court of Exchequer, for each customer, and for the several comptrollers of the several ports of the kingdom; on each of which books was endorsed the port for which it was; that it contained a certain number of leaves, and was for an entry to be made therein of all goods imported and exported, and the duties payable thereon, from such a day to such a day.

Who were to make returns upon oath of the customs received, and to pay them into the treasury.

These books were called port books; and from them the said officers or their deputies were twice in every year, to wit, in Michaelmas and Easter term, to give and deliver true and exact accounts to the said court of Exchequer upon oath, of all and singular the customs, subsidies, impositions, and sums of money, collected and received for his majesty's use; and were also at the end of every year

year to return the said port books ; and the respective customers or collectors were to pay all the money they had so collected into his Majesty's treasury.

Thus it continued until the King's revenue was set out to the farmers of the revenue, who (as has been said before) appointed officers of their own to receive the duties, instead of the patent officers. But yet the patent officers were necessary at times in their employments ; for there were several other acts to be done by them which they only can do ; especially where the seal of the office is required for the more authenticating any act ; as in cases of cockets and certificates, &c. for the commissioners of excise have no seal, nor of course the collectors appointed by them.

Other officers appointed by the farmers of the revenue.

The act of excise and new impost directs that there shall be commissioners for that duty not exceeding five in number, and a surveyor *, to be appointed by the Lord Lieutenant or other Chief Governors of Ireland, who are to be managers and governors of the office of excise created by the said act ; with a power, with such approbation of the Lord Lieutenant, &c. to appoint collectors † in the several

And by the commissioners of excise and revenue.

* I do not find that any such officer as surveyor of the excise at large has been ever appointed under the act. There is still indeed a surveyor general of the customs, subsidies, poundage, and impositions ; but the excise cannot be construed to come under any of those denominations, it being an entire distinct duty.

† The first statute which mentions the collector is the 3 Hen. 6. c. 3. Eng. But Lord Chief Baron Gilbert, in his treatise of the Exchequer, is of opinion that by the collector mentioned there is not intended the collector of the customs, (for that that officer came in much later) but the collector of the subsidy of tenths and fifteenths. But this seems not agreeable to the very words of the act. And the act of poundage and tunnage, 14 and 15 Car. 2. c. 9. seems to consider the collector of the port or collector of the customs as an officer before that time existing ; though whether he were a distinct officer or one and the same with the customer does not

several ports of the kingdom to collect the revenue of excise. And by the patent of the commissioners and governors of the revenue who are seven in number, of whom five are especially to manage the excise, they are empowered to appoint, and do appoint (amongst several other officers) receivers and collectors to receive and collect during his Majesty's will and pleasure (amongst others,) the said revenues arising by the said act of poundage and tunnage. And those revenues are accordingly collected and accounted for, and paid in by, the collectors of the several districts together with the other revenues received by them *.

The

not plainly appear. But it is said that, in general, the said collectors appointed by the commissioners of excise have been deputed by the customer and other patentee officers to collect and receive the customs; and the accounts, in which the customs and excise are blended, are always certified by the two patentee officers, the customer and comptroller; for by the act of poundage and tunnage the commissioners of the customs have not any power to collect the customs, nor to appoint any officer for the purpose; such a power would have been to the prejudice of the customer and comptroller, who had patents antecedent to the said act.

* Notwithstanding the customs are thus received and accounted for, yet the port books were for many years sent forth to the customers and comptrollers from the Chief remembrancer's office, who is entitled to a fee of 10s. for each book; but no return having been made by the said officers for several years, as by their patents, it was said, they were bound to do, and they and the commissioners of the revenue refusing and declining any longer to pay for the said books, a complaint was made thereof to the court of Exchequer, by one of the Chief remembrancer's secondaries, on the 18th of November 1757, whereupon an order was conceived that they should show cause why they should not return the said books.

Upon service of which order several affidavits were made by the deputies to several of the said patentee officers, and particularly by the deputies to the comptrollers, &c. of Londonderry and Galway, whereby it appeared that no such port books had been delivered to them for many years: and upon examining of several of the patents it appeared, that there was no such clause therein for returning the said books as had been suggested.

But

The duty of the collector of Dublin port is the same with that of the patentee customer and collector, as to making entries and rating all goods imported and exported.

Collector of
Dublin port
his duty.

And after the goods have been so entered and rated by the patentee customer and collector, what they have so done is to be examined by the examiner of the customs; and if they be under rated, it is to be made good by the merchant or officer who rated the entry; if the mistake be to the prejudice of the merchant, he is to have an allowance or draw back in his next entry.

And there are also in every district of the kingdom surveyors of several kinds, to wit of the port, and excise, tide surveyors, &c. who are to direct, instruct, and inspect the several officers inferior to them, in the district, port, or place allotted to them, or which they have the conduct and management of.

Surveyors of
port, &c.

But however, the said order of the 17th November 1757 was notwithstanding made absolute by an order of the 11th of June 1758; and it was ordered that the several customers and comptrollers of the several ports of the kingdom should return yearly into the Chief remembrancer's office the several port books they should be served with by the pursuivant of the said court of Exchequer, or be attached without further motion; and that the pursuivant should deliver yearly to the several customers and collectors the several port books which should be delivered to him by the usher of the said court, and that he should return the names of such customers, &c. as should refuse to accept or receive the said books, by the first of the then next Michaelmas term.

Accordingly they were delivered by the usher to the pursuivant, and the pursuivant sent them out; but he being entitled to a fee of 3s. 4d. on the delivery of each of the said books, and the customers and comptrollers refusing to pay the same, he would not give them the books; and having made an affidavit of these facts, and thereupon the said matter being on the 26th of February 1759, again brought before the court, it was ordered to stand over until the term following; but nothing further appears to have been done therein.

And

Two principal ones in Dublin and their duty.

And on the custom house quay in Dublin there are two principal ones, who are to inspect the other officers employed, to instruct them in their duty, and to see that they do it; to take an account of all wine and tobacco discharged; and to see the discharge of all goods inward and outward; and if there be any exciseable goods, not in the book of rates, to value them in the excise, after the customer, comptroller, &c. have rated the custom thereof. And when this is done, and the proper allowances made, the merchant is to draw three entries thereof as they are called, one for the collector, who is to receive both the custom and the excise; one for the customer and collector; and one also for the examiner of the customs, who, if he finds any error or mistake therein, immediately puts a stop to any further proceedings of the merchant until the same is rectified. The surveyors on the other quays are also to instruct and direct the other officers on the quays allotted to them, and to examine all boats going up and down the river, &c.

Store keeper, surveyor and comptroller of the stores their duty.

There are also a store keeper, surveyor and comptroller in the stores, who are to examine all fine and other goods brought into the stores before they are discharged, and to take an account of those that are not discharged.

Tide waiters, land waiters, their duty.

The tide waiter and land waiter, it is said, were formerly but servants to the surveyor; but they are now commissioned officers; and when the tide waiters are on shore they are to attend at the tide surveyor's office, to be ready at all times to go with him on board such ships as he shall think convenient to place them in; and when he so goes on board he is to rummage the ship, and, if he finds any fine goods he is to secure them and bring

bring them to the stores, or to give them in particular charge to officers on board, and to send an account thereof to the collector and land waiter; and the tide waiters so placed on board are to take an account of all the goods, as they are discharging, and to take special care that none be concealed or secretly conveyed away; and that they are delivered to the land waiters, who are also to be careful to attend the discharging thereof on the quay, and to see that the goods and the notes thereof agree. And if there be any fine goods or small parcels in any boat or lighter, the land waiters are to take care that the same be immediately put into the stores. And they are not to permit any goods either to be laden in, or landed from, any boat or ship, without warrant from the collector, except such fine goods, or small parcels; and for these they are to have a surveyor's direction.

And they are to enter all their warrants, and also all the discharges in a stock book; and to keep the warrants by themselves until the ship is discharged; and then to deliver them to an officer, who in Dublin port is called the *Jerquer*; who was originally instituted in order to bring the masters and commanders of ships to a due method of invoicing; and for this purpose he is to compare the tide waiters bill, land waiters discharges, and ware house note for goods remaining in the store, with the masters invoice, and to place all down in a jerquing book; and to see that they and the masters entry do all agree; and if any difference be, to note it down, and to make a true return in his jerquing note to the commissioners before such ship be cleared, &c.

Jerquer, his duty.

There are also four Surveyors general of excise for the whole kingdom, one for each province, who are to visit

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Surveyors general of excise, their duty.

the several districts of the several collectors given them in charge, as often as they possibly can, and therein strictly to examine the several officers employed; to see that they have acted properly, and with activity in every branch of their duty, and to direct and assist them in all particulars of their business.

C H A P. VI.

OF PRISAGE.

Prisage what,
and how pay-
able in Eng-
land.

PRISAGE is an ancient duty payable to the Crown by prescription; and signifies a certain quantity of wine taken for his Majesty's use, out of every ship importing the same. And in England it is due at the rate of 1 tun out of 10; for which the Crown pays the merchant 20 shillings, by way of compensation for freight.

How in Ire-
land.

But in this kingdom the settlement of prisage is as follows, viz. when the quantity of wines imported in any one ship amounts to nine tuns, and under eighteen tuns, single prisage or one tun is taken; when such quantity amounts to or exceeds eighteen tuns, double prisage or two tuns are taken; but no money is paid to the merchant.

In kind or in
money.

It is either taken in kind, according to its original institution, or a certain sum is paid in lieu thereof by the importer. If in kind, half the quantity is taken by the proper officers before the mast, and the other half from behind the mast. When not taken in kind, the following rates are settled, by agreement, to be paid in lieu thereof; and are received and accounted for by the collector of the
port

port where such prisage becomes due, in like manner as any other duties due to the Crown.

Rates settled by agreement to be paid in lieu of prisage.

Rates by agreement.

French wine,	{ For single prisage,	£30
	{ For double prisage,	45
Malaga wines and Sherries,	{ For single prisage,	40
	{ For double prisage,	60
Canary,	{ For single prisage,	50
	{ For double prisage,	75

Prisage wines taken in kind are set up to publick sale by inch of candle, and the produce thereof paid to the collector. There is also a custom of 15 shillings per tun payable on prisage wines by prescription; which custom is paid in lieu of all other duties whatsoever by the merchant importer, over and above the prisage or composition for prisage, and not by the persons to whom the prisage is due.

This wants further explanation.

This duty was remitted or altered by Ed. I. in England, with regard to foreign merchants, by imposing a tribute of 2 shillings on every tun of wine imported there, which was called *butlerage*; but this does not extend to this kingdom.

Butlerage.

This duty was granted by King Henry II. in the year 1177 to Theobald the son of Herveius Walter, to whom the King gave the butlership of Ireland, whereby he and his successors were to attend the Kings of England at their coronation, and present them with the first cup of wine, for which they were to have certain pieces of the King's plate; and from thence it is said the name of Butler is taken. And this duty was confirmed to

Prisage granted to the butler.

the said family, afterwards earls, marquisses and dukes of Ormond, by several after grants; particularly in the reigns of Edward III. Philip and Mary, and Car. II. and became vested in the late earl of Arran, by an act passed by the British parliament in June 1721, enabling him to purchase the forfeited estates of the late James duke of Ormond, his brother.

Agreement
concerning
it, between
the crown and
Ormond fa-
mily.

But in process of time, these customs being extremely troublesome in the collection of them, an agreement was entered into between the Crown and the said James late duke of Ormond in the year 1704, whereby the said duke of Ormond was by deed or instrument under his hand and seal to empower the commissioners of the revenue in Ireland, by their officers, to collect and receive to her Majesty's use and behoof the said duties of butlerage and prisage, for seven years from Michaelmas 1704; and in consideration thereof, the yearly sum of £3500 was to be paid to the said duke of Ormond, his heirs, executors, administrators and assigns, out of her majesty's revenues in this kingdom; which agreement was accordingly carried into execution, and her Majesty's letter and grant accordingly had and passed for the said annual sum. Afterwards, the said duke of Ormond executed a further lease to the then commissioners of the revenue, on the same terms with the former, bearing date the 16th day of August 1707, for ten years and an half from Michaelmas 1711; and afterwards, by deed bearing date the 19th day of November 1709, the said duties were leased for a further term of ten years and an half, to commence 25th March 1722, for the like annual sum of £3500, which expired at Michaelmas 1732. And in the year 1733, the same were leased by the said Charles earl of Arran, for three years from Michaelmas 1732, in consideration of the yearly sum
of

of £4000, for which the said earl had the King's letter and grant as aforesaid; and they so continued to be renewed for three years, for several years; but this being found very troublesome, the said earl of Arran, in the year 1744, proposed either to collect these customs himself, or to set them for a long term, or at the will of both parties; which last proposal was agreed on; and accordingly his late Majesty K. Geo. II. by his letter, dated at St. James's, 9th April 1744, appointed a yearly sum of £4000 to be paid to his lordship for the said customs during his Majesty's pleasure. And this agreement still subsists between the Crown and the heir of the said earl.

It is said the Crown is a considerable loser by the farming of those duties of prisage and butlerage; for that they don't amount annually to near the sum which the Crown so pays for them.

A question has arisen, whether prisage wines, in the hands of a subject, are liable to the duties imposed on wines by the act of excise 14 and 15 Car. II. c. 8. and the additional duties by subsequent statutes; for, by the act of tunnage and poundage, prisage and butlerage are particularly excepted. This question depends on the construction of the act of excise, to which the other acts (by which the additional duties on wines imported are imposed) refer. By the first clause in the act of excise relating to wines a duty is imposed on all wines imported; so that, if it had rested on that general clause, there would have remained no doubt but that prisage wines would have been liable.

But the difficulty arises on the subsequent clause, by which all the said duties are to be paid by the first buyer, before

Whether
prisage wines
in the hands
of a subject
are liable to
the excise and
additional
duties.

*The exception in
the first act of tun-
nage & poundage
made 14 & 15. Car.
2. ch. 9. is not of
prisage wines from
the duty imposed,
but is of prisage to
prevent its being
taken away by
the words directing
that no other duties shall
there (aid by the act should)
be paid.*

before he receives the commodities from the merchant importer; or by the merchant importer, being a shop-keeper, retailer or consumptioner; and it may be said that the grantee of the prisage is neither an importer, nor a buyer from the importer; and that this clause explains the former, and confines the duty to such wines only as are bought from the merchant importer, or retailed or consumed by him.

However on consideration of the whole act and of the nature of prisage, it is holden by the best opinions that the duty attaches immediately upon the importation of the wine; and that the latter clause was not intended to discharge the duty imposed by the former, but only regulates the collection, and the manner of payment of the duty in favour of the merchant.

And as this construction seems to satisfy the words of the act, so it is conceived to be reasonable both with regard to the publick and the grantee. The design of the law makers (as appears from the preamble) was to establish a certain revenue for the defence and preservation of the realm; and therefore it should seem that the act is to be liberally construed for the benefit of the publick; and prisage being a custom due to the King for wines brought in by merchants, paying by prescription 20 shillings per tun, the grantee retains the full benefit of his grant against the importer; since his right of taking the prisage wines from the merchant at the prescription price remains as it did, and is put on the same foot with other subjects, in case of his own consumption; but in case of sale, he is in no sort affected by the act, because the duty falls on the buyer; whereas a contrary construction would lessen the fund designed for the publick service, and tax the subject
to

to enrich the grantee, which it is conceived could not have been the intention of the legislature.

It is likewise apprehended that this construction is warranted by the authority of the judgment in the case of Paul and Shaw, in the Exchequer chamber in England, in Hillary term in the 8 Ann, 2 Salk. 617. where the question came to be, whether the grantee of the prisage in England was liable to the additional duty charged on wines by the 9 and 10 Will. 3. c. ²³ 4; in which case it was unanimously resolved that the grantee was liable. And it is not apprehended that the different penning of the English and Irish acts, in relation to the payment of the duty, will vary the case as to the present question; the English act requiring the importer to give security for the payment of the duty, and giving him the advantage of 10l. per cent. for prompt payment; and the Irish act directing the payment to be made by the first buyer; or by the importer, being a shopkeeper, retailer, or consumptioner. And it must be observed that, though from the nature of prisage the grantee may in strictness be considered as a buyer from the importer, yet he cannot in any respect be deemed an importer.

The additional duty was one of tonnage & portage on wines imported & not an excise duty.

However the duty, if any be due on the excise act or additional duties, has not been paid.

C H A P. VII.

LIGHT-HOUSE DUTY.

Light-house
duty, what.

LIGHT-HOUSE duty is a tribute of four pence per tun payable to his Majesty, by his prerogative, by foreign ships trading to Ireland, towards the support of his Majesty's light-houses, which are erected here for the safeguard of the lives of sea-faring men, and the preservation of ships and cargoes.

Granted to
Sir Robert
Reading in
trust for Lady
Mountrath.

King Charles the second, by letters patent in the 17th year of his reign, in consideration of services done by the Countess Dowager of Mountrath, then married to Sir Robert Reading, did grant unto Sir Robert, in trust for Lady Mountrath, a duty of one penny per tun inwards, and one penny per tun outwards, to be levied on all ships belonging to subjects; two pence per tun in like manner upon all ships belonging to strangers; ten shillings yearly on fishing boats; and upon all French ships such a duty as English ships paid at Bourdeaux, provided that it should not be less than two pence per tun inwards and outwards; upon condition that he should build and maintain six light-houses in this kingdom.

Another
grant to the
Earl of Arran
under the
same trust.

This patent was surrendered, and another granted in the 19th year of the same reign to Richard Earl of Arran, for the term of sixty-one years, to the same effect and on the same trust.

Several

Several petitions were afterwards presented to the House of Commons of England, particularly from Chester and Liverpool, complaining that the said duties were a grievance and burden to trade; whereupon letters patent bearing date the 19th of July, 1672, were made out to Sir Robert Reading, granting him a yearly salary of £500 out of the concordatum money; and Sir Robert obliged himself by deed not to receive the duties payable by subjects; but the duty on foreigners was still payable.

Subjects ships
afterwards
exempted.

In the session of 1703, the House of Commons of this kingdom, observing this charge of £500, made inquiry into the execution of the covenants of the patent, (which was then become the property of the Earl of Abercorn by his marriage with Sir Robert Reading's daughter) and it appearing that only two of the six light-houses were kept up and those very ill supplied and attended, they came to several resolutions which they ordered to be laid before his Grace the Duke of Ormond, then Lord Lieutenant. These resolutions, in January following, were sent by his Grace to the commissioners of his Majesty's revenue, with orders to make their report in relation to the site and cost of two of the light-houses; and in April, 1704, their excellencies the Lords Justices gave the like orders in relation to the other four.

Resolutions of
the House of
Commons
concerning
them.

In consequence of the measures taken upon the commissioners report, the Earl of Abercorn surrendered his patent; and Queen Anne, by her letter dated 22d of November, 1704, entered at the signet office, did direct the management of the said light-houses to be put under the care of the commissioners of the revenue, and that the expenses should be paid out of the revenue. But this letter gives

The patent
surrendered to
the Crown.

the board no power to erect or maintain light-houses in any other places but there specified.

New light-
house at
Loophead.

In September, 1717, a memorial of the corporation, protestant merchants, and citizens of Limerick was presented to the House of Commons of this kingdom, upon which they came to a resolution that the building a light-house on or near Loophead at the mouth of the river Shannon would be of extraordinary use to the publick, by preventing shipwrecks on the western coasts of this kingdom; which resolution was laid before his Grace the Duke of Bolton, Lord Lieutenant, who referred all the papers to the commissioners of the revenue, with directions to determine the situation and expense of the intended light-house which was accordingly done; and his Majesty King George the first, by his letter of the 25th of April, 1720, entered at the signet office, did order that the then commissioners of the revenue should defray the charge of maintaining of the same out of the revenue at large. But neither doth this letter give any authority to the commissioners for erecting or maintaining any new light-houses; and there are not any light-houses now maintained out of the revenue but by virtue of these two authorities.

How the duty
is paid.

The duty above-mentioned continues still payable by all foreign ships trading to Ireland, and becomes due immediately upon their arrival in any port in Ireland. But no more than four pence per tun is taken for any one voyage, though several ports may be touched at in the course of it. The payment of it will appear from the receipt or certificate of the collector receiving the light-house money, which is given to prevent any disputes that may possibly arise about it, on their putting into any other harbour in the kingdom during that voyage.

And

And this duty at present amounts to about £400 or £500 yearly; and the expense of maintaining the several light-houses amounts to above double that sum.

The amount of it.

C H A P. VIII.

OF THE INLAND EXCISE, ALE, &c. WINE, &c. LICENSES.

THE INLAND EXCISE is the duty upon beer, ale, and strong waters, granted to the Crown by 14 and 15 Car. 2. c. 8. after the following rates, viz.

Inland excise.

For every 32 * gallons of ale and beer, of above six shillings the barrel price, brewed within this realm by the common brewer, or in his vessels, or by any other persons who shall tap or sell out beer or ale, to be paid by the brewer, or such other persons respectively, two shillings and six pence.

On ale and beer.

For every 32 gallons of six shillings beer or ale, or under that price, brewed by the common brewer, or in his vessels, or by any other persons who shall tap and sell such beer or ale, to be paid by the brewer, or such other persons, six pence.

For all aquavitæ or strong waters, distilled within this realm, whether of foreign or domestick spirits or materials, to be afterwards vended, to be paid upon every gallon, by the first maker or distiller thereof, four pence.

On strong waters.

* Which gallon is to contain 272 $\frac{1}{4}$ cubical inches.

Additional
duties.

Besides which perpetual duties there have been since granted, and are now payable, the following additional duties, viz.

	l.	s.	d.
For every 32 gallons of beer or ale above six shillings price,	0	2	0
For every 32 gallons of beer or ale not above that price	0	0	4
For every gallon of aquavitæ, &c.	0	0	4

Brewers and
distillers to
make weekly
entries.

And all brewers and distillers liable to such excise are to make weekly entries on every Monday at the excise office, of the quality and quantity of all beer, ale, and strong waters brewed or distilled the week before; and pay and clear the excise, on forfeiture of £20 for the first week's neglect, £40 for the second, and £60 for the third; besides double the value of all liquors so brewed or distilled by them in such weeks.

Power given
the commis-
sioners to ap-
point gaugers.

And the commissioners of excise have power given them to appoint sworn gaugers to enter, by night or by day, into any houses, &c. belonging to any brewer or distiller, and to gauge their vessels and take an account of their liquors. And the returns of such gaugers to the commissioners or their sub-commissioner shall be a charge upon the brewer or distiller, if it exceeds the quantity by them entered.

Allowance to
common
brewers.

Common brewers, in paying their excise, are by the act to be allowed 64 in every 704 gallons of beer, and 32 in every 672 gallons of ale, and so in proportion for a greater or lesser quantity by them brewed, free from all duties; which

which is to be deducted from their payments, in respect of filling, waste, leakage, returns or other accidents. But instead of the above allowances, pursuant to a letter from Lord Wharton, then Lord Lieutenant, to the commissioners, dated the 24 September 1709, an allowance of 2 gallons in 22 of ale, and $2\frac{1}{4}$ in 23 of beer, is now given.

Here may be observed a material difference between the allowances in import and inland duties. In the first case, the deductions are always made out of the duty; but in the last, out of the quantity. In the first, the duty is always charged, and the £5, £6, or £10 per £100, is afterwards subtracted; or if goods are entitled to any abatement on account of damage received, the duty is always first paid down, and the allowance is given by way of drawback or repayment. In the last, the proportional quantity of liquor is deducted out of the total number of gallons, and no more charged than what duty is really paid for.

Difference
between the
allowance in
the import
and inland
excise.

The gaugers likewise, on taking any gauge of warm wort, make an allowance of one tenth part, pursuant to an article in their instructions.

Allowance on
warm wort.

And by 11 Geo. III. 2. and continued by 13 Geo. III. 2. a duty of one penny per gallon is to be paid out of all cyder which shall be sold or tapped out by retail.

The frauds and abuses practised by brewers and distillers require a more than ordinary circumspection, which has given occasion to numerous penal laws in relation to them too voluminous to insert here.

The

The officers for managing and collecting those duties are the gauger, surveyor, and collector of the district. The whole district is divided into walks, to each of which there is a gauger assigned.

Gauger, his
duty.

The gauger goes round his walk, twice every week; and takes an account of every brewing within it, and of the quantities of each sort of liquors made at each brewing in that compass; this he reduces into gallons, according to which the duty is charged.

Surveyor, his
duty.

The surveyor of the excise goes after the gauger, once in the month, and takes private notes, in his pocket book, of the several brewings in that month and the quantity and qualities brewed; which are compared with the gauger's book. And every month they both sign a return to the collector, which becomes a charge on each person therein mentioned, according to which the excise is received by the collector at his monthly office.

Duplicates of
their returns
sent to the
commissioners
monthly.

Duplicates of those returns, signed by the collector, gauger, and surveyor, are sent monthly to the commissioners of excise. They are then examined by an examiner appointed for that purpose, (called the examiner of the surveyor and gauger's books,) as to the computation of gallons, and calculation of money. Whereupon the examiner makes out a charge against the collector, which he transmits to the Accomptant general.

The

The ALE and BEER LICENSES, and the WINE and STRONG WATER LICENSES form another branch of the hereditary revenue. The duties arising from the former were granted by the 14 and 15 Car. II. 6. which enacts that none shall keep any common ale house or tipling house, or use common selling of beer or ale by * retail without a license; for which 20s is to be paid to the collector, for his Majesty's use, for every year that the person shall be so licensed. And no such license is to be granted for a longer term than a year from the Easter preceding the date of it.

Ale and beer
licenses.

WINE and STRONG WATER LICENSES are founded on the 17 and 18 Car. II. 19. which enacts that no person shall sell by retail any kind of wine, aquavitæ, usquebaugh, brandy, or other distilled strong waters, without a license.

Wine, and
strong water
licenses.

The rate of wine licenses is such a sum as shall be agreed upon, not less than 40s yearly in any case, nor exceeding £40 yearly within the city or county of the city of Dublin, nor exceeding £20 yearly in any other part of the kingdom.

Rate of wine
licenses.

The rate of strong water licenses was by 17 and 18 Car. II. to be such sum as should be agreed upon, not less in any case than 40s, nor more than £10 yearly within

Rate of strong
water licenses.

* Which by 7 Geo. II. 3 is explained to be selling by any measure less than a gallon.

the city or county of the city of Dublin, nor more than £5 yearly in other part of the kingdom. But by 3 Geo. III. 27. the rate of strong water licenses within the city of Dublin, and within four miles of the tholfel of faid city, was altered to fuch fum as fhall be agreed on, fo as none do pay lefs than £4, nor more than £10 yearly.

And no license for felling wine or strong waters can be granted for any term exceeding three years from the Michaelmas preceding the date of it.

By whom
collected.

The power of granting fuch licenses, and appointing collectors of the duty, was by thofe ftatutes vefted in commiffioners to be commiffioned under the great feal in each county, and nominated by the Chief Governor or Governors of the kingdom out of the juftices of the peace and others. But as no fuch commiffions were for many years paft fubfifting, the duty was ufually collected by the collectors of excife; which power is confirmed to them by 33 Geo. II. 4. by which it is made lawful for the commiffioners of excife or any three of them, and the collectors of the excife in their feveral diftricts, to grant fuch licenses.

Cyder
licenses.

Befides thofe licenses for ale and beer, wine and strong waters, it is enacted by 11 Geo. III. 2 continued by 13 Geo. III. 2. for two years from the 25 December 1773, that no perfon fhall fell by retail any cyder without a license, and that fuch fellers fhall pay a duty of ten fhillings yearly.

These

These licences and agreements are certified by the gauger and surveyor, to the commissioners of excise, monthly, together with the inland excise, and are a charge on the collector for the duty.

Certified to
the commis-
sioners of
excise.

C H A P. IX.

OF HEARTH-MONEY.

SO early as the conquest, mention is made in domes- day book of fumage, (vulgarly called smoke far- things,) which was paid by custom to the King for every chimney in the house.

Fumage.

But its introduction into this kingdom was by the stat. of 14 and 15 Car. II. c. 17. and 17 and 18 Car. II. c. 18. by which a duty of 2s. for each fire hearth, &c. yearly, was granted to the Crown, in lieu of the court of wards, payable on every 10th of January, at one entire payment, by the occupier, and recoverable by distress and sale of his goods *.

Hearthmoney
what.

* About the same period, viz. 13 and 14 Car. II. a like duty was granted by the legislature to the Crown, which, upon the revolution, was, by a statute of 1 W. and M. Eng. taken away and abolished. But in six years afterwards, by 7 Wil. III. c. 8. Eng. a tax was laid on all houses, except cottages, of 2s. since advanced to 3s. per house. It were to be wished that at the time this tax upon hearths was imposed in this kingdom, the occupiers of the many wretched hovels here had been exempted as the cottages there, and the deficiency supplied by enlarging the tax upon those of more sufficient ability to pay; which, considering that they only could be considered as receiving any benefit from the abolition of wardships, liveries, &c. those oppressive sources of profit to the Crown, (in lieu of which this duty was given) might readily have been submitted to.

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N

And

Who exempt
from it.

And from this duty no person is exempt, except those who live upon alms, and are not able to get their livelihood by work; and except widows who shall procure a certificate of two justices of the peace in writing, yearly, that the house which they inhabit is not of greater value than 8s. by the year, and that they do not occupy lands of the value of 8s. by the year, and that they have not goods or chattels of the value of £4.

Formerly
farmed by
counties.

This duty was formerly farmed yearly by counties at cant to the highest bidder, who gave security by bond for the payment of his rent, and collected the duty himself; and paid in his rent to the neighbouring collector of the district, who was charged with his bonds.

Now collect-
ed by collec-
tors appoint-
ed by the
commissioners
of the reve-
nue.

But since the year 1704, it has not been farmed, but has been collected by collectors appointed for that purpose, which appointment was by the 17 and 18 Car. II. 18. to be by the lord lieutenant or chief governors, and council. However they were constantly appointed by the commissioners of the revenue, by virtue of a clause in their patent for that purpose. But some doubts having arisen whether such appointment were strictly legal, by 3 Geo. III. 21. all such appointments were confirmed, and a power was thereby given to his Majesty, by commission under the great seal, to authorize and empower the commissioners of the customs and excise, or any three of them, to appoint such officers and collectors.

Who pay it
to the collec-
tors of the
district.

And these collectors make returns of the number of hearths to the examiner of hearth money accounts, who is under the direction of the commissioners of the revenue,
and

and from time to time pay their receipts to the collectors of the respective districts in which their walks lie.

The collectors of the districts return the hearthmoney accounts with the other quarterly accounts to the commissioners of the revenue, who send them to the examiner of the hearth money, who returns yearly a certificate of the charge or produce of each collection to the Accountant general, who lays the credit part of the account before the commissioners of the revenue for their approbation; after which it is brought into the general account of each collection, and deposited in the Auditor general's office, with the remainder of the account.

Who return those accounts to the commissioners of the revenue.

The annual produce of this duty at present amounts to about £60,000.

C H A P. X.

OF OTHER INLAND ADDITIONAL DUTIES.

BESIDES those perpetual inland duties there are now several additional temporary duties, which have been granted, from time to time, to the Crown; some for particular purposes to which they are appropriated by parliament, and others for the support of government generally.

The several inland temporary duties.

And these are upon coaches and other wheel carriages; gold and silver plate; cards and dice manufactured in the kingdom; hawkers and pedlars; and on stamps.

And first, as to the duties on coaches and other wheel carriages, of which there are three.

Duty on
coaches, &c.

By the first, there is payable for 7 years, from 25th of March 1772, for every coach, chariot, &c. with 4 wheels, not used for hire, 20 shillings, to be paid yearly on the 10th day of January during the said term; and for every chaise, chair, &c. with 2 wheels, not used for hire, 5 shillings yearly, payable as before. The produce of which duty is to be paid by the Vice treasurer to the commissioners of the inland navigation, for the improvement of tillage and other useful purposes. 11 and 12 Geo. III. c. 4.

A second.

By the second, there is payable for one coach, chariot, &c. with four wheels, which any person shall keep in his possession, 10 shillings; and for every coach, chariot, &c. exceeding that number, which any person shall keep in his possession, except hackney coaches and stage coaches, from 25th December 1773 to 25th December 1774, or from 25th December 1774 to 25th December 1775, 20 shillings, and for every chaise with 2 wheels, 10 shillings. But no person subject to the greater, is to be subject to the lesser duty. 13 and 14 Geo. III. c. 1.

A third.

By the third, there is payable for every coach, chariot, &c. with four wheels, which any person shall keep in his possession, except hackney coaches and stage coaches, at any time during the said years, 20 shillings. 13 and 14 Geo. III. c. 2.

How col-
lected.

And for the better collection of those several duties, every person keeping such coach, &c. is within a limited time to certify to the collector of the district an account of
of

of every coach, &c. which he shall keep; and the several duties are to be collected and levied by the collectors of the hearthmoney, or by such other persons as shall be appointed for that purpose, in the same manner as the duty of hearthmoney is collected and levied.

As to the duty on gold and silver plate, there is payable for seven years, from the 25th of March 1772, out of all gold and silver plate which shall be made or wrought in the kingdom, 6 pence for every ounce troy, to be paid by the makers and workers thereof. Which duty is to be paid to the commissioners of the inland navigation. 11 and 12 Geo. III. c. 4.

Duty on gold and silver plate manufactured here.

And no goldsmith or silversmith is to expose to sale any gold or silver plate, until it be assayed by the assay master; and if it be found conformable to the standard, then it is to be touched by the wardens of the company of goldsmiths, and marked with the marks used for that purpose; and then the said duty is to be paid by the person bringing it to be assayed and touched; and the assay master is, upon receipt of the duty, to stamp or mark it with such stamp or mark as the commissioners of the revenue shall from time to time appoint. *ibid.*

To be assayed and stamped, by the assay master.

And the assay master is to make entries, in a book, of the several quantities of plate so stamped or marked by him, and the duties received by him, &c. and once in every month to pay all the money received by him to the Vice treasurer. *ibid.*

Who is to receive the duty and pay it to the Vice treasurer.

As to the duties on cards and dice, there is payable during the said term of seven years from 25th of March 1772, for every pack of cards made in the kingdom 5 s. to

Duties on cards and dice manufactured here.

to be paid by the makers; which duties are to be paid to the commissioners of the inland navigation. *ibid.*

A second on
cards.

And there is payable a further additional duty of 6 pence for every pack of cards made in the kingdom, between the 25th of December 1773 and 25th of December 1775. 13 and 14 Geo. III. c. 1.

To be paid to
the collectors
of the ports.

And the makers of cards in Dublin, Cork, and Limerick, and of dice in Dublin and Cork, to which places respectively the exercise of those trades is confined, are during those terms, once in every 14 days, to make a true entry upon oath with the collectors of those ports * respectively, of all the cards and dice by them made within that time; and are once in 28 days to clear all duties owing by them, by paying the same to the collector. 11 and 12 Geo. III. c. 4. 3 Geo. II. c. 12.

Cards and
dice to be
marked or
stamped.

And during the continuance of that term no cards or dice are to be sold, or exposed to sale, or played with, until such mark upon the dice, and such seal or stamp upon the paper and thread enclosing every pack of cards, and such mark upon one of the cards of each pack, shall be put, as the commissioners of the revenue shall appoint in writing, according to a power given them. 11 and 12 Geo. III. 4.

Duty on
hawkers and
pedlars.

As to the duties to be paid by hawkers and pedlars; there is to be paid by every hawker, pedlar, &c. (except persons in the act excepted) travelling on foot or otherwise between 25th of March 1774 and 25th of March 1776, a duty of twenty shillings by the year; and by every

* It should seem more agreeable to the nature of the duty to make the entry with the collectors of the excise.

person

person so travelling with an horse or other beast drawing burden 20s. by the year, over and above the said first mentioned duty of 20s. which duties are to be paid by the Vice treasurer to the incorporated society for promoting English protestant schools. 13 and 14 Geo. III. c.

And every pedlar so travelling is, before the 25th of March in each year, to deliver to the collector of excise for the district a note in writing how and in what manner he intends to travel; for which he shall then pay the duty; and thereupon obtain a license from such collector to travel or trade. *ibid.*

Licenses to be obtained by them from the collectors.

As to the stamp duties; they are a duty imposed upon all parchments, vellum, and paper, whereon any legal proceedings or private instruments of almost any nature are written or engrossed, between the 25th of March 1774, and 25 of December 1775, upon all almanacks, newspapers, advertisements, and pamphlets of certain forms and sizes; and these imposts are very various, according to the nature of the thing stamped; from six pounds to one half-penny. 13 and 14 Geo. III.

Stamp duties.

For the better levying and collecting which duties power is given to his Majesty, or the Lord Lieutenant or Chief Governor of the kingdom, to nominate commissioners or officers for stamping and marking parchment, vellum, and paper, and managing the duties thereon, who are to keep their head office in Dublin, and they are empowered to appoint other inferior officers, with the consent of the Lord Lieutenant, &c. for that purpose, and for the collecting and levying the duties. *ibid.*

Commissioners or officers to be appointed for stamping, &c.

And

Parchment
and paper to
be carried to
the office to
be stamped.

And all vellum, parchment and paper, chargeable with the said duties, is, before any of the matters or things in the act mentioned, shall be thereon engrossed or written to be brought to the stamp office, to be stamped and marked; which the commissioners or officers are required to do, on being paid the duty. *ibid.*

No parch-
ment &c. to
be written on,
till stamped,
under penalty
of £10.

And if any person shall engross or write upon any vellum, parchment, or paper, any of the matters or things for which the said vellum, parchment, or paper, is chargeable with the said duty, before it be stamped, or upon any vellum, parchment, or paper, that shall be marked for any lower duty than the legal duty, there shall be answered and paid his majesty, for every such deed, instrument or writing, the sum of £10; and no such record, deed, instrument, or writing, shall be pleaded or given in evidence in any court, or admitted to be good or available in law or equity, until as well the said duty, as the said sum of £10, shall be first paid to his Majesty's use, and a receipt produced for it under the hand of some of the officers appointed to receive the duties, and until the vellum, parchment, or paper, be stamped. *ibid.*

How the duty
is to be paid
by the officers
who collect
it.

And all the officers concerned in the levying and collecting those duties are to keep separate and distinct accounts thereof. And the persons employed to collect and levy them in the city and county of Dublin are to pay the same into the treasury on the first monday of every month. And the persons employed to collect and levy them in other parts of the kingdom are to pay them to the several collectors of the inland excise of the respective

tive districts. And every stamp officer, in six days after his making any payment into the treasury, or to any of the said collectors, is to give notice of the amount of such payments to the commissioners of stamps. *ibid.*

And none of the said duties are to be received or collected by or paid to the said commissioners of stamps; and the several persons who shall be employed in receiving, collecting, or paying the said duties are, once in every year, to exhibit their accounts thereof to the commissioners for taking imprest accounts, who are authorized to examine upon oath the said persons accountants concerning the money raised or collected by them, and paid by them into the treasury or to the collector of inland excise; and they are to produce proper vouchers for any sum raised received and paid. *ibid.*

Their accounts subject to the examination of the commissioners of imprest accounts.

C H A P. XI.

OF SEIZURES, FORFEITURES, and FINES.

UNDER this head is comprehended all the revenue arising to the crown, by its moiety or share of the produce of all seizures, which are condemned and sold as forfeited under the act of tunnage and poundage, and the act of import excise; as well as of fines imposed for breaches of those laws; to which the subsequent acts creating the additional duties usually refer.

The revenue from seizures &c. what.

Offences
against the
acts of custom
and excise
where triable.

And the offences committed against the former act are determinable in the court of Exchequer, by information or action, unless when otherwise directed by subsequent acts. But offences against the act of excise are tried before the commissioners or * sub-commissioners appointed according to that act; from whose judgment there lies an appeal to the Lord Lieutenant, or other Chief Governors and privy council, or such as they shall appoint under the great seal, who are called commissioners of appeals.

Goods con-
demned how
sold.

And in the former case goods condemned are sold by publick cant; in the latter by inch of candle. But the ancient course with regard to goods condemned in the court of Exchequer was, after they were appraised, to sell them to such as would give most above the value appraised at.

Register of
seizures his
duty.

There is an officer called the clerk or register of seizures in the port of Dublin, who takes an account of all seizures and of the produce of them. And when any seizure is returned to him, under the act of customs, by any seizing officer, he is forthwith to send a copy of the return (commonly called the seizing note) to the commissioners of the revenue, who direct their solicitor to prepare an information in the Exchequer; when under the act of excise, he sends it to the clerk of the informations for Dublin port, who brings it to the solicitor, who prepares an information before the commissioners of excise.

* The sub-commissioners are usually the collectors of the district, the surveyors of the coast, port, and excise, and the Surveyor general of excise.

REVENUE OF IRELAND.

99

The register of the seizures receives the informer's moiety of all fines and seizures for breaches of the excise laws in Dublin port, for which he gives a particular receipt; and the King's moiety is afterwards paid to the collector, who gives a receipt for it. And he makes up and passes his accounts quarterly with the commissioners of the revenue, who examine it with the book of information of sales, which is attested by the surveyor of the stores and store-keeper. But in all other ports or districts the collectors receive the whole, and, after deducting the necessary charges, divide the remainder between the King and informer. The King's moiety of the money arising from fines or the sales of seizures condemned in the court of Exchequer is paid by the chief remembrancer, who sells such condemned goods, into the treasury; and the informer's moiety is in like manner paid by him to the informer. But the modern usage is for the chief remembrancer to pay the whole to the commissioners of the revenue, who distribute it as above-mentioned.

To whom the
produce is
paid.

C H A P. XII.

OF THE MANNER OF PASSING COLLECTORS ACCOUNTS.

ALL the branches of the revenue hitherto treated of are accounted for by the collectors of the several districts in the kingdom in the following manner.

Collectors ac-
counts when
and where re-
turned.

Every collector is to return weekly and monthly abstracts, to the commissioners of the excise and customs, of his receipts and payments; and at the end of every quarter he is also to return, upon oath, a general account of

Passed before
the Account-
ant general,
and how
charged, as to
quit, &c rents.

the receipts and payments for that quarter; which quarterly accounts are to be compared and examined by the Accountant general, and the examiner and comptroller of the collectors accounts of incidents. And at the end of the year, to wit between the beginning of Easter and the end of Trinity term, the whole is to be drawn out; and, when thus drawn out, he passes it first before the Accountant general, assisted by the clerk of the quit rents, where he is charged, as to the quit, &c. rents, by the rent roll on record in the Auditor general's office; and he is to give an account of every particular sum received, for what land due, and from whom; the residue makes up the charge. He also gives a particular account of the arrears in the same manner, with the reasons why they are not collected.

As to customs
and import
excise.

As to the customs and import excise, he is charged with the quarterly returns of entries made to the commissioners of the revenue, signed by the customer, comptroller, and himself.

As to inland
excise, licen-
ses, &c.

As to the inland excise, and wine, &c. and ale, &c. licenses, he is charged with the monthly returns sent to the commissioners of the revenue, signed by the gauger, surveyor, and himself.

As to seizures.

As to the seizures, his charge is the clerk of the seizures quarterly accounts, made up and compared by the commissioners of the revenue, and his receipts for the money arising from them.

As to hearth-
money.

As to the hearth-money, he is charged with the accounts of the collectors of the hearth-money, made up with the Accomptant general, and the vouchers for payment made to him by such collectors of hearth-money.

The

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The discharge of the collector of the district on all these branches are Exchequer acquittances produced for payment into the treasury; the arrears returned, which go in charge to him for the ensuing year; the salaries to the commissioners and to other under officers; and all such allowance as the commissioners of the revenue are by their commissions empowered to make; as for suits at law where there is occasion, and the like.

How discharged.

The account thus stated by the Accountant general is from him returned to the Auditor general with the original vouchers and other matters relating to it.

The account returned by the Accountant general to the Auditor general.

The Auditor general re-examines and abstracts it under general heads and engrosses it on parchment, and brings the collector to swear it before the Barons of the Exchequer, as is before mentioned.

Who examines and engrosses it, &c.

The account thus engrossed and sworn is filed of record in the Auditor general's office, and the balance on the foot of the accounts is a charge on the collector in his next account.

And files it in his office when sworn,

CHAP.

C H A P. XIII.

OF FINES AND AMERCIAMENTS, AND FORFEITED
RECOGNIZANCES; AND THEIR ESTREATS.

Casual revenue of what consisting.

THE casual revenue consists of fines and forfeited recognizances, (commonly called the green wax) custodiam rents, profits of the hanaper, &c. together with some other casualties, as waifs, estrays, felons and fugitives goods, &c. And as none of these are collected by the commissioners of the revenue or their officers, but are all (except the profits of the hanaper) collected by the several sheriffs of the kingdom, and accounted for by them, and paid immediately into the treasury, it will be therefore proper to treat of them distinctly. Besides the matters relative to these casualties are chiefly transacted in the court of Exchequer, where there are several rules and orders made concerning them in no sort relative to the other branches of the revenue.

Fines or oblatas what
Madox 272.
Madox 273.

Madox 315.
Madox 320.
Madox 323.
Madox 327.

FINES (anciently called *oblata* or offerings) and amer- ciaments made in the early ages a very considerable part of the Crown revenue. The former were originally offerings or gifts to the Crown, for grants and confirmations of liberties and franchises of sundry kinds; for liberty to hold or quit certain offices or bailiwicks; by tenants *in capite* for licenses to marry, or that they might not be compelled to marry; for liberties relating to trade or merchandize; for the King's favour or good will, and that he would remit his anger and displeasure; for the King's protection,
aid

aid or mediation; to have seisin or restitution of lands or chattels; and that persons might not be disseised; to be discharged out of prison, and replevied or bailed to the custody of lawful men; for acquittals of various crimes, even homicide; and for a variety of other matter.

Madox 329,
332.
Madox 332.
Madox 341.
Madox 344.

But the most remarkable head of this branch of the revenue was the fines paid to the crown for proceedings in the King's courts of justice; as fines to have justice and right; for writs, pleas, trials and judgments; for expedition pleas, trials, and judgments, or for delay thereof; fines payable out of the debts to be recovered.

On law proceedings.
Madox 293,
296.
Madox 308,
309.
Madox 311.

Upon consideration of the nature of which several fines on law proceedings, it seems as if justice or right was purchased from the Crown. Against which mischiefs a remedy was provided by that clause of *magna charta*, *nulli vendemus, nulli negabimus aut differemus rectum vel justitiam*; which clause seems to have its effect; for though fines for writs and process of law in many cases were always a part of the Crown revenue, viz. from the time of the conquest or soon after; and were constantly paid after the making the great charter, as before, yet they were afterwards more moderate than they used to be before; and the actual denying of right and the stopping and delaying of it, which before, upon paying of money or fines, used to be practised, were by those charters quite taken away, or by degrees brought into disuse.

Formerly
very oppressive.
Madox 314.

So that of this great and indeed monstrous branch of the revenue, arising from fines or *oblata* in this sense, all that remain are the duties arising to the Crown for sealing patents and original writs, now usually called the profits of the hanaper which are treated of hereafter; and post fines

Now reduced
to profits of
the hanaper
and post fines.

finer, fo called with refpect to the fines on the original (or premier) fine, which are paid to the Crown on every fine levied of land, *pro licentia concordandi*; which are as much as the premier fine, and half as much more.

Amercia-
ments or mi-
sericordias.
Madox 365.

The revenue arifing from AMERCIAMENTS or *mifericordias* was anciently fo like that which arofe from fines or *oblatus*, as to be fcarce diftinguifhable from it. But they were generally fet for misdemeanors or trespaffes of different kinds; for diffeifins; for breach of affize; for defaults or non appearances; false judgments; on hundreds for murder or man flauughters, for not making hue and cry, &c.

In civil ac-
tions how
affeer'd and
eftreated.
8 Co. 39. b.

But the amerciaments moft neceffary to take notice of here are thofe which were fet by the court of common pleas in civil actions, either on the plaintiff, *pro falfo clamore*, or on the defendant, for detaining a juft debt, by giving judgment *quod fit in mifericordia*. And thefe judgments were delivered to the clerk of affize, and by him to the coroner of the county, who, according to the direction of *magna charta*, c. 14. affeer'd or affeffed the amerciaments, and afterwards delivered them back to the clerk of the affize; and the judges eftreated them into the Exchequer.

Now inconfi-
derable.

But in procefs of time the coroners in all civil actions kept one certain rule of amerciament, which became fo inconfiderable, a fum as not to be worth the affeering; and therefore they are now never levied.

Fines in cri-
minal pro-
ceedings, &c.

Fines in criminal proceedings (which is the fenfe in which they are ufually confidered at this day, and not in that of *oblata* or offerings) were originally fet by the King's bench and juftices in eyre, as ranfoms from imprifonment;

ment; and are usually imposed by courts of justice as a commutation of corporal punishment for crimes and misdemeanors; or for defaults or contempts of parties in suits, jurors, &c. or for neglect of duty or misbehaviour of officers of justice.

All courts of record, where the fines are not granted away by letters patent, transmit the estreats of them to the treasurer's remembrancer's office; and these, with the fines and amerciaments imposed in the Exchequer, were delivered to the clerk of the pipe formerly, who put them amongst the *nova oblata* on the great roll.

Estreats of
fines.

Another branch of the casual revenue arises from FORFEITED RECOGNIZANCES, which are bonds or obligations of record acknowledged to the King, conditioned usually for appearance at the court, to prosecute felons, &c. to preserve the peace, &c.

Forfeited re-
cognizances.

No recognizances were taken to the King by the ancient conservators of the peace, nor by the sheriffs or constables; but, in cases that were bailable, the sheriff or constable took an obligation in his own name, but not any recognizance to the King. And the sheriff bailed to appear at his own torn, and the constable to appear at the view of the frank-pledge.

Recognizances not taken
by conservators of the
peace, &c.

But when justices of the peace were appointed, they issued their warrant to apprehend the offender; and if it were a bailable offence, they by 3 Hen. VII. c. 3. Eng. bound him by recognizance, either to appear at the assizes or quarter sessions, and likewise bound over the evidence to prosecute; and, if the offender or prosecutor did not appear, the recognizance was forfeited, and the clerk of

But by justices
of the peace.

the sessions or of the peace respectively estreated it into the Exchequer.

And of forfeited recognizances.

Also recognizances taken for the King in his courts of record, or before justices of the peace, are to be estreated into the court of Exchequer when forfeited, that process may issue on them.

No recognizances estreated out of chancery.

But there are no recognizances estreated out of the petty bag into the Exchequer, because such recognizances, being for performing decrees of the court of Chancery, are taken to one of the masters of the court, and not to the Crown; and therefore are sued there, and nothing is estreated. And the statute staple and statute merchant are estreated into chancery by the statute, and from thence execution is to go.

Fines with regard to their estreats either foreign.

Fines with regard to their estreats may be considered as of two sorts; the first are called foreign fines, viz. such as are imposed by the other superior courts of justice, or by inferior courts, as the assizes and sessions, &c.

Or those imposed by the court of Exchequer.

The second sort are those imposed by the court of Exchequer, in suits commenced between parties there; as also on officers of justice, &c. some of which are in the pleas side or in the chief remembrancer's side, as on sheriffs, coroners, the pursuivant, &c. for not returning writs or process, or for not bringing in the bodies of persons whom they have returned taken; others are imposed in the treasurer's remembrancer's side; as on sheriffs for not accounting, not paying their tots into the treasury, or for not clearing their several accounts when stated; as also for not returning writs; and on clerks of the Crown and peace, for not returning the estreats of the assizes and sessions, &c.

And

And if these fines be not respited or reduced, (or more properly discharged) they are estreated by the Exchequer, and the estreats of them are made up by the respective officers. And such as are on the Pleas side are to be delivered to the clerk of the estreats or summonister, who is to issue them in process to the several sheriffs. But those in the Chief and Second remembrancer's offices are to be delivered to the clerk of the pipe, in order to be written in charge and issued in process. And these last fines are of more consequence than those of the Pleas or Chief remembrancer's office, and the parties on whom they are imposed, generally entitled to much less indulgence; and yet these fines are seldom levied, and little or no money is paid into the treasury for them, as they are generally reduced (or more properly taken off) on paying some small sum to the poor box of the Court.

How estreated.

The estreats from the Court of Common Pleas are delivered to the Barons in open court, by the hands of the judges of that court, the last day of each issuable term, And in those estreats are not only all fines and amerciaments in that court, but all post fines and alienations and all the outlawries in that court; and these estreats are by the Barons delivered over to the second remembrancer and by him sent down to the clerk of the estreats; except the estreats of the outlawries, which remain in the second remembrancer's office.

Estreats from the Common pleas.

And the Court of King's Bench, having both a civil and criminal side, are to deliver into the Exchequer, estreats not only of fines set on sheriffs and other officers, in the civil side of the court, but also of such fines as have

Estreats from the King's bench.

been set on persons for criminal offences. And these estreats are certified by one of the judges of the court, and sent to the second remembrancer of the Exchequer, who is to send them to the clerk of the estreats. And in order to enforce the regular and punctual return of these estreats by all those who are to return them, (which is a matter of much consequence) the following general rules and orders have been made from time to time.

Rule, 19th,
Feb. 1683.

Ordered, that the clerks of the Crown and peace, and clerks of the markets, shall enter their deputations with the clerks of the estreats, and in the second remembrancer's office.

Rule 2d,
Dec. 1684.

Whereas it is observed that the sheriffs, on their appofals, return many of the clerks of the Crown and peace to have no issues to answer the fines on them for not returning their estreats in time, whereby his Majesty is much damnified; for prevention thereof, it is ordered, that the clerk of the rolls do send a list of the names of the clerks of the Crown and peace to the second remembrancer's office, that pursuivants may issue; and that their several deputies be required to enter their deputations in the said second remembrancer's office, that it may be certainly known against whom to issue attachments.

Rule 28th,
Nov. 1692.

Ordered, that the several clerks of the Crown and peace do enter their patents and deputations in the summoner's office; and that Mr. Chetwood * do give them notice having undertaken to do it; and that the Chief remembrancer do certify the names of such of the clerks of the Crown and peace as have entered their patents

* Solicitor for the Casual Revenue.

with

with him, or their deputations with the second remembrancer and summonister, and a list of those who have not entered them.

Ordered that all the clerks of the Crown and peace do return their estreats to the second remembrancer, and that he deliver them to the clerk of the estreats; and that after so returning them the second remembrancer do forbear further fining; and that, when the clerks of the Crown and peace move to take off, the fines imposed before the returning the estreat to the second remembrancer they produce a certificate from the summonister.

Rule 30th,
June 1694.

The court taking notice that, for some time past, the several estreats of fines forfeited recognizances, &c. returned into this court, have been first lodged in the summonister's office, whereas regularly the same ought, by the ancient method of the Exchequer, to be first delivered into the second remembrancer's office, and entered there, and to be transmitted by the second remembrancer, to the summonister, and process to issue from thence first thereupon, and so forwards to the other offices; it is thereupon ordered by the court that, for the future, all estreats of fines and forfeitures whatsoever be returned into the second remembrancer's office and entered there, and from thence transferred to the summonister, who is to give a receipt for the same, and to issue process as usual. And it is ordered that the summonister do not receive any estreats, nor issue any process thereon, until the same are first transmitted to him from the second remembrancer.

Rule 26th,
April 1708.

The

Rule, 22d
November,
1703.

The Lord Chief Baron having taken notice of the inconveniencies that are occasioned by the neglect of the clerks of the Crown and peace, and also of the commissioners of oyer and terminer, in not returning the several estreats of fines imposed at the assizes and sessions in the several counties in this kingdom; it is this day made a standing rule of the court that all the commissioners of oyer and terminer, and the clerks of the Crown and peace of the several counties of this kingdom, do return the estreats of all the fines imposed at the several assizes and sessions into the second remembrancer's office, the next term after the same are imposed; that is to say, the fines of Lent assizes and sessions before the last day of Easter term following; and the fines imposed at the summer assizes and sessions in Michaelmas term following; or in default thereof the second remembrancer is ordered to move the court the first day of the following term to have them fined for their neglect.

And in pursuance of this rule it appears that the prothonotary and clerk of the Crown have been fined in the Exchequer for their neglect in not returning these estreats.

Power given
the court to
amerce clerks
of assize, &c.
for neglecting
to return
estreats,

And by stat. 12 Geo. I. c. 4. it is made lawful for the Barons of the Exchequer to amerce clerks of assize, clerks of the peace, or other persons to whom it may belong to make returns of estreats into the said court of Exchequer, for neglecting or omitting to perform their duty in returning the said estreats, and to cause the said amerciaments to be levied by such means as other amerciaments set in the said court have been used to be done.

And

And the court will amend the estreat of a fine in some cases, as was done in the case of the King against John Henderson; who being fined £30, for a misdemeanor, by the justices of the county of Down, which was afterwards reduced by them to £15, but by mistake of the clerk of the peace the whole was estreated, it was ordered by the court that the process be amended according to the justices order. 4th May, 1678.

Estreats amended on account of the mistake of the clerk.

Amended by the clerk.

A man who lived within the liberty of the archbishop of Canterbury was fined by the judges of oyer and terminer in Southwark for a misdemeanor in court, which fine was estreated; but no notice was taken in the estreat of what place the man was; therefore Sir Constantine Phipps moved that the estreat might be amended by adding the place where the man lived, that the archbishop who had the grant of the fines *tam integre tenentium quam non integre tenentium infra*, &c. might come before the foreign apposer and claim this fine by virtue of his grant; and said that a man had been indicted and fined in Essex, which fine was estreated here, and such an amendment made upon application; but to this it was said, there was an addition in the indictment which was a guide to the court, being a record to amend the estreat by; but here is a record for the King, and nothing but an affidavit on the other side; and the court refused to do any thing on the motion. June 26th, 1718, in the Exchequer in England. The King against the archbishop of Canterbury.

Or when there is a record to amend by. Bunb. 24.

So the party has been in several cases admitted to plead or demur to an estreat. As where a person pleaded to the estreat of a recognizance, that the justice of the peace did not take it in the county where he was a justice; to which

Plea to an estreat of a recognizance.

which the Attorney general demurred generally; and the defendant joined in demurrer. Mich. 1663, in the revenue side of the Exchequer here. The King against Mc. Cleary.

The like.

So where Oliver Keating, being fined, as clerk of the peace of the county of Longford, for not returning estreats of the sessions, applied to the court for liberty to plead to the estreat, upon affidavit that another person, and not he, was clerk of the Crown and peace of said county; and the court granted it. Michaelmas 1668, in the same court. The King against Oliver Keating.

Demurrer to an estreat of a fine, and rule for the Attorney general to join in demurrer.

So where the defendant demurred to a fine of £500 on him imposed in the court of common pleas; and it appearing by affidavit that his Majesty's Attorney general was attended with a copy of the demurrer, a day was appointed by the court for the Attorney general to join in demurrer. Same term, the King against Henry Nugent.

A plea to an estreat of a fine imposed at a sessions that the defendant was not within the jurisdiction of the sessions.

Arthur Ward was fined for not attending as a jury-man at the general sessions of the peace held for the city of Dublin at the tholsel of the said city; which being estreated into the Exchequer, the said Arthur Ward pleaded to the estreat that he was an inhabitant of St. Mary's abbey in the county, not within the jurisdiction of the court, and therefore not bound to attend. To this plea the Attorney general replied, that the said Arthur Ward was, at the time of the said fine, an inhabitant of Mary's abbey in the parish of St. Michan, ward of Oxmantown, and county of the city of Dublin, and within the jurisdiction of the court; and judgment and execution were afterwards had against the defendant for want of a rejoinder. Trin. 26 Car 2. King against Ward.

Mathew

Mathew Halley, clerk of the peace for the city and county of Londonderry, was fined the 16th of October, 1674, for not appearing and attending his office at the sessions of Newtownlimavaddy in the said county; which being estreated into the Exchequer, he pleaded a grant by letters patent of the office of clerk of the peace of the city and county of Londonderry; also a patent to the corporation of Derry to hold the session of the peace there and not elsewhere, and that it accordingly had been so held; that three justices of the peace issued a precept to the sheriffs of the city and county of Londonderry for a sessions at Derry, and that other justices had issued another precept for a sessions at Newtownlimavaddy, and that he attended at Derry. And upon the Attorney general's examining the plea and the patents; and it appearing to him therefrom, and from the estreats of the other justices, and affidavit of the clerk of the peace, that the several facts in the plea as set forth therein were true, he caused a *noli prosequi* to be entered on the record. Trin. 27 Car. 2. The King v. Mathew Halley.

Plea of matter of excuse to an estreat of a fine imposed at a session.

So, in the same year and term, the sheriffs of the city and county of Londonderry were in like manner fined by the same justices for not attending them as aforesaid, and like proceedings had.

And in the same term and year several fines to the amount of £2220 having been imposed on the sheriffs of the county of Londonderry, and others, at the session of the peace held at Newtownlimavaddy in the said county, it was ordered by the court that the estreats of the said fines should be staid from the file till further order; and

on the 9th day of December following, on motion of his Majesty's Attorney general, they were ordered to be filed.

And on the 14th day of February, 1674, it was ordered that the said fines should not issue in process until the second day of the then next Easter term, by which time the defendants were to plead thereto.

A like plea
to an estreat
of a fine
imposed at a
session.

John Eustace and Maurice Eustace, clerks of the peace of the Queen's County, were fined by two of the justices of the peace for the said county, in a considerable sum, for not attending a general sessions of the peace held in and for the said county, on the 10th day of January 1675, to do their office; which being estreated into the Exchequer, the said John and Maurice pleaded to the said estreat, that they on that day attended the sessions held before other justices; whereupon the like proceedings were had as in the former case Trin. 1675, the King against John and Maurice Eustace.

So, in Hillary term in the same year, John Sandes high sheriff of the said county, was in like manner fined by the said two justices for not attending them; and the like proceedings had.

Plea to an
estreat of a
forfeited re-
cognizance
taken in
K. B.

Thomas Roche having been bound in a recognizance in the King's bench in Michaelmas term, 1754, to appear in the same term, and prosecute Peter Hamilton in the said court for divers charges and offences, and not to depart the court without license; and having made default, in not appearing pursuant to his said recognizance; and the same having been therefore estreated into the Exchequer; the defendant made special application to the court for liberty to plead to the recognizance, and to the estreat
and

and process grounded thereon, and that the said process might be staid; which motion came on in Hilary term 1755. And although the question then was whether the defendant had a right to plead, and not whether the plea he should plead was maintainable or not, yet the latter was first entered into: and it was urged on behalf of the defendant, that the recognizance had not been forfeited, for that the defendant had appeared pursuant thereto in the said court of King's bench in Michaelmas term 1754, and was then and there ready, day after day, to prosecute the said Peter Hamilton for the said charges and offences, but was not during the whole term called upon for that purpose; and that the recognizance dropped for want of being continued; and that the court could not continue the recognizance against the consent of the bail, nor extend the time in the condition; that the subject has a right to plead to fines and amerciaments, and by stat. 5 Rich. II. Eng. to any debt due to the crown; (by stat. 33 Hen. VIII. Eng. he may plead an equitable plea,) that the recognizance was not estreated truly or fully enough; that it was imperfect, in not saying when default was made; that such plea would not be an averment against the record, for that the estreat is not a record; that estreats and process have been both staid and amended; and that a *scire facias* should have first issued, to show cause why execution should not issue, and it was compared to the case of fines in seneschals courts; that there is no necessity of showing to the court what is intended to be pleaded; for when the plea comes in, if it be frivolous, it may be set aside, or demurred to; if not so, it may be replied to; and Hard. 409, 471. Sav. 53. 2 Leon. 55. 1 Ld. Raym. 243 Lane 55. 4 Co. 71. Comb. 385, Maddox 367. 370. and the cases before mentioned were cited.

On the side of the Crown it was argued that the application was unprecedented; that none of the cases quoted came up to the present one; for they all were either 1st, where there was a defect of jurisdiction in the court below; or 2d, where some matter of excuse *in pais* was to be pleaded which was not an averment against the record; or 3d, cases of fines imposed, which stand upon other principles.

1st. The case of M'Cleary, in 1663, was a plea to the estreat that the justice of the peace who took the recognizance did not take it in the county where he was justice; that this turned on its being no recognizance for want of jurisdiction, and did not contradict the judges certificate. The like of the case of the King against Ward, 26 Car. II. a fine imposed at the sessions of the city of Dublin on an inhabitant of St. Mary's Abbey, which was alleged not to be within the jurisdiction; and the case in Hard. 471. was of a fine in a court leet for breach of a by law.

That in the present case there was not any question of the jurisdiction; the court estreating, though called by the other side the court below, being the supreme criminal court of the kingdom; and that though this was mentioned to be like fines of seneschals courts, and the counsel for the defendant were for treating it with the same respect only, yet the cases were widely different; the presumption being in favour of superior courts; otherwise of inferior courts; and therefore it must be taken that the Kings bench had power to make the estreat, and have done rightly; and that their proceedings cannot be reversed by any court in this kingdom.

2dly,

2dly, That Savil 53. was a plea of a matter *in pais*, which was an excuse, and did not contradict or aver against the record; and so were all the precedents out of this court. That what was here desired was expressly an averment against the record; which, though it may be as to inferior courts, cannot as to superior. Thus, to a presentment delivered in a session and received, no averment lies that it was not assented to by 12; but it is otherwise of the presentment of a court leet; for the party distrained may aver that it was not presented by 12. 1 Hawk. 130. 2d. ditto 162. Lib. assize 38. 21. Bro. abr. tit. record, pl. 45. a record of outlawry of divers persons was certified into the Exchequer, among whom one was certified who was really not outlawed; and, on his goods being taken in process, he came, and said that he was not outlawed; and parcel of the record came by writ of Chancery out of the court of King's bench into the Exchequer; and Green, one of the justices of the King's bench, said he was not outlawed, but that it was a misprision of the clerk. Shipwith (who was then chief Baron) said "although all the justices should record the reversal they shall not be believed, when we have the record that he is outlawed." 4 Co. 71. Hyne's case, one of the resolutions is that there can be no averment against the record, though any may be taken which stands with it; for the record shall not be tried by *pais*.

That the estreat, though perhaps not a record to all purposes as in case of fines, for as to them it is only a minute of the judgment, Lane 55, (as where on a conviction of recusancy, *prout patet per estreat* was pleaded in abatement, it was held ill, 1 L. Raymond 243.) yet, as to others, it is a record for the revenue; it is a record of the default

default below, the only record of it. That 4. Co. 71. says nothing of an estreat. The fact of appearing or not can be no other way tried than by the record; nor can any *scire facias* lie on the recognizance for this forfeiture even below; so that the council for the defendant must mistake in saying they could have pleaded to a *scire facias* below. That this case of non appearance stands on another footing than other forfeitures, as it is a fact immediately within the knowledge of the court, and therefore requires no further information; consequently no *scire facias* necessary, as where the forfeiture is occasioned by an act not within their immediate knowledge; and that the same holds where an excuse is to be pleaded. So if the recognizance be for appearance, and in the mean time to be of good behaviour, this forfeiture must appear on *scire facias*, or by conviction on an indictment, before it can be estreated. So where collateral matter of excuse is pleaded, as death of principal, Savil 53. or his being forceably taken away, Hunt's case Comb. 385. but that these are not like the present case, for they all are consistent with the record in admitting the non-appearance and excusing it.

3dly, That the cases of fines imposed are not applicable, for the record is not contradicted by the plea, which admits the imposition of the fine though it disputes the cause or authority of imposing it.

That the application was therefore *primæ impressionis*, and its never having been made is an unanswerable reason against making it now. That of necessity credit must be given to the relation of courts of their own acts; it is the only proper proof and there never was an instance of a jury's trying it. That many judgments have been given
by

by default, and many writs of error brought on them, and sometimes errors in fact assigned; but it never was assigned for error that defendant did not make default, nor can it be assigned; for how can it be tried but by the record? and that has set it out to be so; so that a *certiorari* would signify nothing; but that there is a distinction as to inferior courts. That Beaumont's case, 2 Leon 55. was thus; Note, it was holden by all the barons of the Exchequer, that a duty, which is not naturally a debt but by circumstances only, as debt upon a bond for performance of covenants or to save harmless, may be assigned over to the Queen for a debt; but in such case a present extent shall not issue, but a *scire facias* shall issue forth, to know if the party hath any thing to plead against such assignment. But that was not like the present case; for what averment is there in it against a record? the party before assignment would have had a right to plead; for the plaintiff must have sued and declared; but that no suit could have been on this estreat below. That this distinction of pleas was consistent, and would rule and account for all the cases.

That an application to the commissioners of reducements is the usual method to mitigate both fines and estreated recognizances; but they never do it, till the parties stand a trial; which was the true reason of this extraordinary application.

As to the objection that the recognizance was not estreated truly or fully enough as it does not alledge when the default was, it appears that the condition was to appear in Michaelmas term, when it was respited to Hillary term, and the default was then; and as to what was said of its having dropped for want of being continued, the

the rule showed the fact to be otherwise: that if the party be not discharged the recognizance continues of course, the condition being not to depart without license. Farresly 97. Owen and others of the city of Coventry were bound by recognizance, and appeared for two terms, and no prosecution being against them, it was moved to discharge their recognizance, or dispense with their appearance; but the court said they could not do it, and that all they could do was to respite their recognizance continued for more than a term. Regina versus Redpath. Fortescue 358. Ca. law and equity, 152. And that as to the objection that the court could not continue the recognizance against the consent of bail, that is true, if bail deliver the principal in court and desire to be discharged, which was not this case; else the court may continue them. That possibly the defendant might have applied for a pardon, and that therefore, since some things may be pleaded and others cannot, a previous application for leave to plead and stop the process becomes necessary; and it must on such application be shown what plea is intended, as on leave to plead double matter; but that the plea mentioned by the counsel for the defendant being a direct averment against the record ought not to be received.

That as to what was insisted on, that it need not be shown to the court what is intended to be pleaded; for that when the plea comes in, if frivolous, it may be set aside or demurred to; if not, it may be replied to; in answer thereto, the application for leave proves the granting it discretionary, and the stopping the process is confessedly so, and therefore the discretion of the court must be determined by the consideration whether the party be entitled to relief; and this necessarily obliges him to inform the court what his excuse or case is, or, in
other

other words, what plea he intends to put in. If the plea, being true, will be a good one, he ought to be admitted to plead; but if the plea offered be such as by law he cannot be admitted to prove, (which was the present case) or, being true, is no foundation or cause to relieve, the court in either of these cases ought not to receive the plea or stop the process; and that even supposing such sham plea should be admitted, it is not a consequence that the process should be stopped.

That if this be a matter of favour the party should be in court to ask it. Where parties are convicted the court never suffers motions in arrest of judgment or for new trial but in the prisoner's presence, in order that if the motion goes against him the court may have him in their power.

Upon the whole, the court were of opinion that the plea ought to be laid before the court; which was accordingly done, and served on the solicitor for the Crown; to whereupon, and on hearing counsel on both sides, and it being admitted that pleas in such cases had been received, the court were of opinion it was reasonable in this case, and accordingly ordered it to be received, and that all things should stop till further order.

The plea was, that the defendant had appeared in the said court of King's bench pursuant to the condition of his said recognizance, and was then and there ready to prosecute the said Peter Hamilton as he was also bound to do. It was then considered whether the plea was to be replied or demurred to; and upon consulting Sir Robert Henley then Attorney general of England thereon, he was of opinion that the plea was bad and should

be demurred to; that it tended to falsify the record or (which is more absurd) to join issue upon a matter in law to be tried by the country; for that it seemed to be intended to try the effect of the recognizance by a jury. That if the estreat was irregular it should have been set right by an application to the court; but that it seemed to be regular, and upon the whole of the case the recognizance to be forfeited.

Accordingly a general demurrer was afterwards filed, and the plea with leave of the court was afterwards amended; but the defendant having consented to judgment, and applied for a *nolli prosequi*, and the Attorney general here being made acquainted therewith, and consenting to the process being stayed, the same was stayed; and in Trinity term 1770, an order was conceived on a motion made by the Attorney general for the defendants, on the warrant of the Lord Lieutenant that the same should be received, and that satisfaction should be entered on the record of the judgment against the defendant and his bail, and that their recognizances should be discharged pursuant to the said order. The King against Roche.

May be reduced either before or after they are estreated.

But all these fines, &c. as well foreign, as those imposed by the Exchequer in suits commenced in either side of the court between party and party as aforesaid, may be reduced as well before as after they are estreated.

Reductions by commissioners of reductions.

But if the foregoing fines cannot be reduced by the court of Exchequer, as the court of Exchequer, they may be reduced by the commissioners of reduction, who are the Lord High Treasurer, Chancellor and Barons of the Exchequer, in presence of one of the King's

King's council, and are appointed by commission under the great seal; and upon a petition to them, they at their discretion reduce the said fines, generally to a very small sum, often to six pence; which being paid into the treasury, and the several officers being satisfied their fees, the party is no further troubled or molested *.

And the fines imposed by the court of Exchequer are entirely under their own power; and are either respited or reduced (more properly discharged) on consents from the attornies concerned, and upon motion thereon. But if they are reduced (or rather discharged) it is upon paying some acknowledgment into the poor box of the court; which was originally intended for the use of the poor, but afterwards came to be equally divided among the Barons, except such part as they thought proper to give among the poor. And originally the court used to barter with the attornies for they sums the should pay on discharging these fines; which seldom exceeded a pistole, or at most two or three, be the sum to which such fine amounted ever so great. But in the year 1716, the court thinking it below their dignity thus to barter with the attornies for the poor box money, a rule or declaration was made (as it is before said, tho' no such rule is to be found in the second remembrancer's office,) that none of these fines should be reduced for the future unless

Fines imposed
by the Exche-
quer, how
reduced.

* In the case of the King against Thomas, Easter term 1752, the Chief Baron said that where a fine is properly imposed, but there are sufficient reasons for reducing it, this must be done by petition to the commissioners of reductions; but that where there is a mistake in the estreating of any sum either by fine or recognizance, the court, as the court of Exchequer, may upon motion and affidavit of the facts, and without any petition, order it to be discharged; and this order is to be entered on the roll.

sixpence per pound were paid to the poor box for the first hundred pounds, and threepence per pound for every other hundred pounds, of such fines. But in a committee of the House of Commons of this kingdom, on the 6th day of November 1723, it was resolved that this rule was obtained from the court of Exchequer by surprise and was a grievance to the subject; since which time the poor box money on such redcement is paid much in the same manner as it was originally and before the said rule of court was made.

No part of them paid into the treasury, unless levied by the Sheriff.

But no part of these fines is ever paid into the treasury, except they are issued in process and levied by the sheriffs, which (as is said before) very seldom happens; and even in this case, the clerk of the pipe seldom *debets* them, but lets them remain a continued charge on the sheriffs. But the court of Exchequer may reduce or discharge them, even after they are estreated by them, upon consent of attorney and upon motion thereon, or for such other reason as they shall think meet.

Often kept on foot by management.

But these last mentioned fines are often kept on foot for years, by the management of attornies in procuring consents for respites; which respites are often kept by the attornies, and revived from time to time, as occasion requires; and, it is feared, have been sometimes fictitious. These improper proceedings not only take up much of the time of the court most unnecessarily, but are also productive of great mischief and inconvenience to the publick by the delay and failure of justice, which must of course be the consequence. Besides they often have been very prejudicial to high sheriffs, who are generally strangers

strangers to these respites until the securities for their sub-sheriffs, by management between the sub-sheriffs and the attornies of the courts, become insufficient; therefore when these fines amount to forty pounds, or some certain sum, they should never be respited further than the next sitting of the court, and should then be taken off or absolutely estreated.

Ordered by the lord chief Baron and the rest of the Barons, that all and every person and persons that shall hereafter obtain any rule either for respite or discharge, shall take out their orders the same term, or at the farthest before the last of the eight days after every term, and enter the same with the officers where the said debts are in charge; otherwise no orders shall be drawn thereon; except upon further motion the court shall give order for the same. Rule 21 Nov.
1664.

Ordered that all parties do take out their orders of reduction, and pay in their money in six weeks, or lose the benefit thereof. Rule 8 Dec.
1680.

Ordered that in all orders of discharge, or orders of respite, there be inserted a clause, that the said orders be entered with his Majesty's commissioners of the revenue, without paying any fee for the same, or they to give out any copy thereof to the prejudice of the treasurer's remembrancer's office. Rule 17 Dec.
1684.

Ordered that all persons who shall obtain any order for respite, reduction, or discharge of any charges which have issued in process against them, be obliged to prosecute and pay such reductions the same term such rules are obtained, or within eight days after; and that such rules Rule 5 Mar.
1684.
as

as are obtained after term be prosecuted as aforesaid by the last day of the term following, or to have no benefit of the said rule; whereof all officers and persons concerned are to take notice.

Rule 28 Nov.
1752.

Ordered by the court that for the future no fines imposed on any sheriffs for not returning writs directed to them shall be reduced, without producing an affidavit assigning the cause wherefore they delayed returning the same; and this to be a standing rule on every side of the court.

Rule 24 July
1772.

Ordered that all consents and affidavits for the respiting of fines imposed by this court upon sheriffs, officers, and ministers of the court, and others, for their neglects and defaults, shall be filed in the second remembrancer's office on or before the day but one next preceding the first revenue day after every issuable term.

This branch of the casual revenue is of much more consequence to the publick than it is generally understood to be; and if more attention was, than is at present, given to the management of it in its several stages, by those who are concerned therein, it would, besides the increase of this branch of the casual revenue, much contribute to promote that due execution of the laws which is so much wanted in this kingdom, and to the preventing the many riots, bloodsheds, and murders, for which it is at present noted; but as in many other instances it happens that the wisest regulations have been frustrated and rendered nugatory by the neglect of some subordinate spring, which in the grand machine seemed scarcely worth attending to, so it is in regard to these fines and recognizances; for it too often happens, from want of due attention to the latter,

latter, that neither the addition or places of abode of the parties who are bound to prosecute offenders, are inserted therein; or that if they are, they are omitted in the estreats; or that persons of no property, credit, or repute, and often persons under fictitious names are taken as bail for the most atrocious offenders; so that process is issued against them, at great expense to the Crown, to no purpose, and the publick justice of the kingdom, in this most essential branch of it, either absolutely defeated or greatly obstructed.

Now the prevention of this mischief is much in the power, and indeed is a part of the duty of the justices of the peace, by being careful to ascertain the prosecutors of offenders brought before them, by their additions and places of abode, and binding them in a sufficient sum to appear and prosecute; and by taking due care not to accept any persons as bail without full knowledge of their credit and sufficiency. And it is also to be wished that the same caution and precision were used, whenever a person is fined for an offence by a court of justice.

And for the enforcing of this a late rule has been made, viz.

Ordered, upon motion of Mr. Attorney general, that the several clerks of the Crown and peace of the kingdom, do for the future insert in their estreats the additions and places of abode of the several persons mentioned therein, who have either been fined or have forfeited recognizances. And that when such additions or places of abode have not been mentioned in the recognizances which have been taken by the justices of the peace, they do so mention it in their returns, with the names of the

Rule 2 June
1772.

the justices who took the recognizances. And that on all fines hereafter to be imposed in any of his Majesty's courts of record in Dublin or elsewhere, commissions of oyer and terminer, as also at the assizes and sessions, and other courts where fines or amerciaments are usually laid or imposed, the several clerks of the Crown and peace, or other proper officers, do immediately enter down the additions and places of abode of such person or persons so fined, and return the same in their estreats; and that the Solicitor for the casual revenue do cause this order to be served on the several clerks of the Crown and peace of the kingdom or their deputies.

C H A P. XIV.

OF THE PROCESS WHICH ISSUES TO THE SEVERAL SHERIFFS CALLED THE PROCESS OF GREEN WAX.

THE method of issuing this process out of the summoner's office, the pipe office, and treasurer's remembrancer's office, all which are usually called the green wax process, is as follows, viz.

Summoner's process.

The clerk of the estreats and summoner issues in process twice every year, viz. in Trinity and Hillary vacations, all fines and amerciaments, forfeited recognizances, &c. which are estreated and returned into the office from the courts of King's bench and Common pleas, and from the several clerks of the Crown and peace, which first process (sometimes particularly called the green wax process) is against the goods only, and is returned by the sheriffs yearly,

yearly, when they come on their accounts; and, after they have compared with the summonister, they bring them to the transcriptor and foreign apposer, who thereon apposes the sheriffs in court on their accounts.

And the foreign apposer makes out a transcript in parchment of all the sums for which the sheriffs do not * *tot*, which are called || *nils*, which he sends down to the clerk of the pipe, and sends a transcript or copy thereof to the comptroller of the pipe, who, in the vacation of the issuable term after the apposal of the sheriff, sends them in process under the seal of the Exchequer to the several sheriffs; which process is called the § summons of the pipe, and is against body, goods, and lands; and upon the sheriffs accounts he apposes the sheriff in court thereon.

Process of the pipe.

And such sums as the sheriffs are not thereon charged with, which are called *nils*, as aforesaid, if they are not reduced or discharged by order, the clerk of the pipe transcribes out of the great roll into what is called a paper book and sends them to the comptroller of the pipe,

Second process of the pipe.

* *Tot*, i. e. *Totum in manibus*.

|| *Nils*, or *nibils*: i. e. *nihil in manibus*.

§ Lord Chief Baron Gilbert, in his *Treatise of the Exchequer*, page 133, says that the process of the pipe is certainly an unnecessary process, and spends a great deal of time to no purpose; since these sums have been already in charge by the first process, and coming out of that office *nibill'd*, that would have been sufficient authority for the clerk of the pipe to transmit them *in schedula pipæ*; for *magna charta* is satisfied, since it appears on the said first process that they had no goods or chattels; and therefore to issue the summons of the pipe is unnecessary. But however that may be the case in England, it seems not to hold here; for the process of the pipe there is against goods and chattels only, and in the nature of a *feri facias*; whereas in this kingdom it is against goods, chattels, body, and lands: so that in fact it is the subsequent process, viz. the second remembrancer's, that seems unnecessary; at least where the debtor himself is living.

who, in the Trinity vacation next following, again issues them in in § process to the sheriff.

Second remembrancer's process.

And what are *nil'd* in this process the clerk of the pipe also makes a schedule of, which is called the schedule of the pipe, and sends it once a year to the treasurer's remembrancer, who, every Trinity vacation, issues the same in process, which is called the ‡ treasurer's remembrancer's process, and is against body, goods, lands, heirs, executors, and administrators. And what sums the sheriff *tots* for upon this process are by the second remembrancer certified to the Auditor general, who draws a transcript thereof, which is called the sheriff's * foreign account, and sends it to the pipe for the purpose of making out the *debets*.

Which used to be continued.

And what was not totted for by the sheriff in this last process used to be renewed and continued to be issued in process by the treasurer's remembrancer until the debts.

§ This second process of the pipe seems to be a most unnecessary, superfluous process, and is directly in opposition to the rules of 25th November, 1685, and of 28th November, 1709.

‡ This is also called the long writ or prerogative writ, and is not issued till a *nihil* is returned upon the summons of the pipe; which was settled to be a part of the liberty of the subject by *magna charta* c. 8. *nos vero vel ballivi nostri non seisemus terram aliquam vel redditum pro debito aliquo, quamdiu catalla debitoris presentia sufficiunt ad debitum reddendum, et debitor ipse paratus sit inde satisfacere.* Gilb. Treat. of Exch. 123. And yet as the sheriff is bound to hold an inquisition on this writ, whether the debtor had any goods and chattels, before he extend the lands, or take the body of the debtor, it should seem as if this writ might be used in the first instance without any violation of *magna charta*; and thereby the persons against whom these process issue prevented from making fraudulent sales or removing themselves and their goods into other counties.

* So called because it is made up from matters not in the pipe, such as the chief remembrancer's *conflat* of 15 sh. for fines for *profers*, the foreign apposer's *conflat*, and the sheriff's certificate of waifs and estrays, &c.

were

were paid or discharged by pardon or by reducement, (which may be at any time before the money is actually paid into the treasury;) or until he was otherwise directed by the court. But this having been attended with great expense to the crown, a rule was made the 28th of November, 1709. (which see hereafter) that this process should issue but once unless by particular order.

And note that all these process and transcripts are issued by the respective officers *ex officio*, without any fee or fees being ever paid by the Crown to any of them for making out or issuing the same, other than the ancient fees due to them on their patents or the establishment, and allowed by the Crown; to wit, to the clerk of the pipe 55l. annually, to the comptroller of the pipe 7l. to the second remembrancer 7l. 15s. 6d. and to the foreign apposer 15l.

These several process issued *ex officio*.

Hence it plainly appears that upon the first process of the green wax the sheriff must either *tot* or *nil* according as the case is and cannot § *o'ni*; for the whole account must appear upon the pipe roll that the clerk of the pipe may issue *debets* for the payment of the sums so *totted* for into the treasury; unless they be before discharged by order of the Exchequer. Besides, many of the sums in this process being small and paid upon the first demand, they were part of an annual charge in the same manner as the other annual revenue of the King was. Nor can he *o'ni* on the second remembrancer's process as the process ends there; and as all that is possible has been done to get them in by holding an inquiry upon the prerogative writ. But he may *o'ni* in the comptroller of the pipe's process as this is a transcript or duplicate of the pipe process.

Sheriff cannot *o'ni* on the first process or on the second remembrancer's process.

§ *O'ni*, i. e. *Oneretur nisi habeat sufficientem exonerationem.*

S 2

And

Sums *o'ni'd*
for continued
in charge
against the
sheriff.

And the sums so *o'ni'd* for therein are continued in charge against the sheriff until he clears his accounts; which if he neglects to do, fines are imposed on him in manner as is hereafter mentioned. But a *tot* in the second remembrancer's process, as well as in the summonister's process, for any fine that is reducible, is considered as an *o'ni*.

Rule 25th
November,
1685.

Ordered for the future that none of the officers of this court do issue process but once; and after that draw them down to the second remembrancer, to the end the prerogative writ may issue where the sheriffs on their apposal return neither body, goods, or lands.

Rule 22d
February,
1686.

Memorandum, it is this day ordered that the process to be issued for the King be made returnable the third return of Trinity term; the court considering the inconveniency which attended the respective sheriffs returning a *Tardè*; and to prevent their having any pretence that the process came late to their hands.

Rule 24th
February,
1695.

The court this day taking notice that the several sheriffs of this kingdom do from time to time make very ill and insufficient returns on the process of the pipe, do hereby order that every sheriff of this kingdom shall for the future call a jury for their better information on their said process of the pipe; and that the comptroller of the pipe do for the future insert a memorandum at the bottom of their process, requiring each sheriff of the kingdom to be informed as aforesaid.

Rule 28th
November,
1709.

Mr. Solicitor general on behalf of her Majesty informs the court, that the process of green wax issuing first against the

the goods from the summonister's office, and on the *nills* returned by the respective sheriffs on that process, the several sums charged in that process and so *nill'd*, are by the summonister transferred to the pipe, and from the pipe are issued in process against body, goods, and lands; and all the respective charges which on that process are *nill'd* by the respective sheriffs on their accounts are therein drawn down to the second remembrancer's office, and that thereon the second remembrancer issues forth process against bodies, goods, lands, heirs, executors and administrators of the respective persons, for the respective charges so drawn down from the pipe office to the second remembrancer's office; from whence the process issues for several years, though the respective sheriffs, both by the inquisition held and returned on that process and likewise on their account, on their oaths, do return that there are not such persons, goods, lands, heirs, executors or administrators to be found in their respective bailiwicks; and that process continuing to issue becomes very voluminous and chargeable to her Majesty whereas really her Majesty derives no advantage thereby; and therefore on behalf of her Majesty prays that for the future process shall not issue more than once out of any office against goods, bodies, lands, heirs, executors or administrators of any of the persons charged in the said respective process; and that on the return of the respective sheriffs on the process out of the second remembrancer's office, an exannual roll may be made up to lie by, and not be issued in process, but by particular order of the court, against any of the persons, their heirs, executors or administrators; and that commissions do issue, when the court shall think fit, to commissioners to be appointed by the court on said exannual roll,

to

to inquire and find out what may be had or levied thereon; court ordered accordingly *.

Rule 14th
May, 1717.

All sheriffs shall hold inquiries on the second remembrancer's process in every barony in their respective counties at their peril.

All processes
for fines estreated to be
delivered to
the pursuivant
and by him to
the sheriffs.

The several processes that issue for all fines estreated, both foreign fines and fines imposed by the court of Exchequer, are to be delivered to the pursuivant, who is to deliver them to the several sheriffs of the kingdom.

And the time and manner of delivering these processes we find settled by the following rule:

Rule 4th
February,
1709.

The court being informed by Mr. Attorney General Forster of the great delays in delivering the several processes of green wax issuing out of the court to the several sheriffs of this kingdom, which is of great cost and prejudice to her Majesty; the said sheriffs not having sufficient time to execute the same; It is ordered, that all such processes be delivered to the pursuivant, in three weeks after the end of every issuable term, by the several officers of this court issuing the same; and that the pursuivant do deliver them to the several sheriffs of this kingdom in three weeks after the delivery of them to him.

* Notwithstanding the above rule, yet where a sheriff neglects to account, in order that process may not be wanting in the several departments several names and sums are taken by the second remembrancer out of the paper book for the year before, for the comptroller of the pipe's process, and two of the roll before the paper book which is called by some the exanual roll for the second remembrancer's office.

And

And these fines, &c. uncollected are, as has been before said, continued in the great roll, and issued yearly to the sheriffs in process, until such time as the court of Exchequer shall think fit to strike them out of the annual charge and place them in the exannual rolls as desperate debts; but before that is done, a commission ought to issue, directed to discreet men, to inquire and return on their oaths whether any thing is to be gotten of these debts. But however it is generally practised otherwise; for when these fines, &c. have been in all the process in the manner before mentioned, so that there appears no likelihood of getting any thing, the clerk of his own accord leaves them out, but lays them up carefully in his office as desperate debts; yet they may at any time afterwards be renewed, and again issued in charge.

Fines uncollected continued in the great roll, and issued yearly in process.

C. H A P. XV.

OF PROFITS of the HANAPER, POST FINES, CUSTODIAM RENTS, FIRST FRUITS, PROFITS upon FACULTIES, and TWENTIETH PARTS.

PROFITS of the HANAPER *. This is a duty arising to the Crown for sealing patents, and for original writs, viz. for all patents or grants of lands or offices, £1 8s. 3d. †,

Profits of the hanaper what.

* So called from the hamper or basket, in which original writs relating to the business of the subject, and the returns of them, were according to the simplicity of ancient times kept, as were others, relating to such matters wherein the Crown is immediately or mediately concerned, in a little sack or bag, in *parva бага*; from whence has arisen the distinction of the hanaper office, and petty bag office, which both belong to the common law court in chancery. 3 Black. 49.

† Of this £1 8s. 3d. the King hath 15 s. (unless it be for patents of offices; in which case he hath but 1 s. 6d.) the chancellor 2 s. for a docquet; the master of the rolls 5 s. the clerk of the hanaper 6 s. 3d.

and

and for original writs, differently according to the nature of the writ. But the $\frac{1}{2}$ moiety of these is granted to the Lord Chancellor for the support of the dignity of his office.

How accounted for.

The clerk of the hanaper passes his accounts before the commissioners of the imprest accounts; before whom the books of entries of patents and writs sealed are produced, which are a charge on him for all money received by him; and he likewise swears to the truth of the charge. His discharges are the receipt of the Lord Chancellor for his moiety, and his warrants for disbursements for the use of the Chancery court, which the Chancellor has a power to make for all or any part of this fund, and Exchequer acquittances for payments into the treasury. And his account is to be signed by the Lord Chancellor yearly.

Post fines.

POST FINES are, as has been mentioned in chap. 13, a duty to the King for a fine acknowledged in the court of Common pleas, to be paid by the cognizee, after the fine is fully passed; being so much and half so much as was paid to the King for the *præ-fine*; and they are estreated

§ The first grant of this moiety that I can find was by letters Patents dated 5th of May 1 James I. to Adam Lord Viscount Loftus of Ely, then Lord Chancellor of Ireland, for the support of the dignity of his office, during his continuance therein; and is expressed to be of one full moiety of all the fines payable to the Crown on original writs, as also of all the profits and emoluments arising therefrom; which grant was confirmed to the same chancellor by further letters patents, dated the 5th of May, in the first year of the reign of King Charles I. but I do not find that this moiety has been expressly granted in any of the patents to subsequent chancellors, altho' it has been constantly paid to them, unless it comes under the general words which have been in all the said subsequent grants; to wit, to have, hold, enjoy, possess, and exercise the said office, together with all and singular the powers, authorities, jurisdictions, immunities, privileges, pensions, fees, salaries, allowances, benefits of the the seal, and finable writs, and all other benefits, commodities, emoluments, and advantages whatsoever, to the said office belonging, incident or in any manner appertaining, or with the said office, at any time heretofore had, held, or enjoyed.

by

by the court of Common pleas into the Exchequer, and levied by the sheriff of the county off of the lands of which the fine was passed, and answered by him in his account.

CUSTODIAM RENTS. These are such rents as are reserved to the Crown on *custodiams*, or leases under the Exchequer seal; which are most commonly made of such lands, &c. as are seized into the hands of the Crown upon outlawries in civil actions, whereon, upon motion of the plaintiff in the action to the court of Exchequer, the *custodiam* is given to him towards the satisfaction of his debt, and a small rent is likewise reserved to the Crown.

Custodiam
rents on out-
lawries in
civil actions.

And such *custodiams* are also granted by the court of Exchequer for debts due to the Crown: and upon seizures for rents reserved on grants from the Crown of lands, rectories, tithes, &c. And in these cases either the solicitor for the King's rents, or the collector of the district, is generally the custodee. For the securing the payment of these *custodiam* rents the custodee gives security by recognizance before the Chief Baron of the Exchequer, who signs the *custodiam*, which is the warrant for its passing under the Exchequer seal.

Or for debts
due to the
Crown.

These rents are all in charge in the pipe, and from thence process issues to the respective sheriffs for collecting them as he does other sums, on which process the sheriff is apposed at the passing of his accounts, and answers for, and pays them together with the money collected by him on the process of the green wax.

In charge in
the pipe.

For more of this matter see chap. CUSTODIAMS.

FIRST FRUITS and TWENTIETH PARTS were also branches of the casual revenue; but they are not so at this day. However it may not be amiss to mention shortly from whence they arose, and when and how they were disposed of.

Profits upon
faculties.

PROFITS UPON FACULTIES. These are ancient profits arising to the Crown, being a part or portion of taxes upon the granting of faculties or dispensations, according to the allotment thereof by the statute of 28 Hen. VIII. c. 19. revived by stat. 2 Eliz. c. 1. to be received and accounted for by the clerk of the faculties; for according to the said act the King is to have $\frac{2}{3}$ of $\frac{2}{3}$ which amounts to £3, and the remaining parts are to be divided among the several officers in the said act mentioned.

How disposed
of.

Of this £3 one moiety was granted by letters patent, dated 10th of April, 20 James I. to Christopher then archbishop of Armagh and his successors in that see; so that there remained but £1 10s. to be accounted for to the Crown. And by letters patent, dated 27th of March 1727, 1 Geo. II. one fourth of the money payable for taxes of faculties, rated at and above £4, and which, according to the computation aforesaid, and in the said act, is the sum remaining to the Crown, was granted to doctor Marmaduke Coghill, then judge of the prerogative and faculties, in consideration of his great diligence and trouble in executing the said office, and in regard the same was an office of great dignity and consequence, and required constant attendance, and that no salary was annexed thereto; to hold to the said Marmaduke Coghill, during such time as he should continue in the said office
of

of judge or commissary of the courts of prerogative and faculties; under the colour of which grant (for none other appears) the said fourth part has been ever since received by the registers or commissaries, successors in the said office, and no part of it accounted for or paid to the Crown.

THE FIRST FRUITS, *primitiæ* or *annates*, are a charge upon admission into church livings; being the first year's profit of every ecclesiastical benefice or promotion in this kingdom. And they are payable in two years by four gales; for which bonds are taken to the Crown by an officer called the remembrancer, clerk and receiver of the first fruits; who receives those dues and formerly paid them into the treasury; but if default be made in the payment of them to this officer, process issues for the levying them as other bonds to the Crown.

First fruits
what.

THE TWENTIETH PARTS were also a charge upon all church livings; being the twentieth part of every year's profit of every ecclesiastical benefice or promotion.

Twentieth
parts what.

And these profits of the first fruits and twentieth parts were originally a part of the papal usurpations over the clergy in this kingdom. And when that power was abolished, and the King declared the head of the church, they were annexed to the Crown by the stat. 26 Hen. VIII. Eng. which is in force here by the 28 Hen. VIII. c. 8. and a valuation was made of them by commission grounded on this act, which was entered in what was called the King's book, which was formerly lodged in the chief remembrancer's office in the Exchequer, but now this and all the records belonging to them are in the office of the clerk or remembrancer of them.

Originally
papal usurpa-
tions, and
transferred to
the King as
head of the
church.

T 2

But

But no part
of the reve-
nue of the
Crown now.

But neither of these are at this day any part of the revenue of the Crown; her Majesty Queen Anne having by patent, dated the 7th of February in the tenth year of her reign, released to the bishops and clergy and their successors the said twentieth parts; and having by another patent, of the same date, granted to the several persons therein named and their successors all the first fruits (which are therein said to amount to about £450 a year) in trust for the building and repairing of churches, and purchasing of glebes, where they shall be wanting, and of impropriations, where the benefice shall not suffice; and for the more liberal maintainance of the minister who has the cure of souls. And these patents were by the stat. of 2 Geo. I. c. 15. confirmed; and since the patent and act of parliament, the first fruits are paid by the clerk or receiver of them to the trustees.

CHAP. XVI.

OF WAIFS, ESTRAYS, GOODS OF FUGITIVES AND
FELONS, DEODANDS, WRECKS, TREASURE-
TROVE, AND GOLD AND SILVER-MINES.

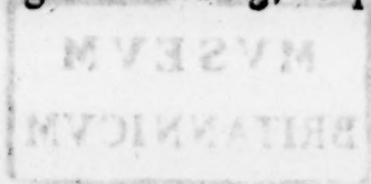
WAIFS, *bona waviata*, are goods stolen and waived or thrown away by a thief in his flight for fear of being apprehended. These are given to the King by law as a punishment upon the owner for not himself pursuing the felon and taking away his goods from him. But waived goods do not belong to the King till seized by somebody for his use; for if the party robbed can seize them first, though at the distance of twenty years, the King shall not have them. And if the goods are hid by the thief, or left any where by him, so as that he had not them about him when he fled, and therefore did not throw them away in his flight, those are not waived goods, and the owner may have them again when he pleases.

Waifs.
1 Black. c. 8.
5 Co. 109.

ESTRAYS are such valuable animals as are found wandering in any manor or lordship, and of which no man knows the owner; in which case the law gives them to the King or his grantee as derelict goods. But in order to vest an absolute property in the King or his grantees they must be proclaimed in the church and two market towns next adjoining to the place where they are found; and then if no man claims them after proclamation and a year and a day passed, they belong to the King or his grantee without redemption. If the owner claims them within the year and day, he must pay the charges of finding, keeping, and proclaiming them.

Estrays.
1 Black. c. 8.

Goods



Goods of fugitives.
Foster 272.

GOODS OF FUGITIVES are the goods of a person who is found upon record to have fled for felony, whether he be found guilty of the felony or not, which are forfeited to the King as a punishment for his having done what in him lay to stop the course of publick justice. But the jury very seldom find the flight; the forfeiture being looked upon, since the very great encrease of personal property of late years, as too great a penalty for an offence to which a man is prompted by a natural love of liberty.

Goods of felons.

GOODS OF FELONS are the goods of persons convicted of felony or treason, or put in the exigent, for which see chap. 17.

Not to be seized until conviction.
1 Hale 365.

By the stat. of 1 Rich. III. c. 3. Eng. it is enacted that neither sheriff, &c. or any other person shall take or seize the goods of any person arrested or imprisoned before he be convicted of the felony, (under which term Sir M. Hale is of opinion treason is comprehended, but qu.) or before the goods be otherwise lawfully forfeited, upon pain of forfeiting the double value of the goods so taken.

Except where a second *capias* is awarded.
1 Hale 365.

But by the stat. of 25 Edw. III. c. 14. Eng. which is not repealed by the last mentioned act, where a person is indicted of felony, (under which Sir M. Hale says treason is comprehended) in the second *capias* there shall be comprised a precept to the sheriff to seize his goods and keep them till the day of return of the writ; and if he be not found then the exigent is to be awarded and the goods forfeited.

James



James late duke of Ormond being attainted of high treason by an act of parliament in Great Britain, a question arose in the Exchequer here, whether a writ of seizure could regularly issue to seize his personal estate, until an inquisition was taken and returned. And Lord Chief Baron Gilbert declared that when a writ of seizure issues it is only to remind the sheriff of his duty; for from the instant of a person's attainder his goods are forfeited to the Crown, and the sheriff *virtute officii* may seize them; and that by the Duke's attainder in Great Britain he was attainted through all the King's dominions; and therefore a writ of seizure was awarded with a clause of inquiry. 29th of February, 1715.

Writ of seizure awarded upon a parliamentary attainder in Great Britain.

A person having been outlawed for treason, a special writ of *capias ut lagatum* issued out of the King's bench against him; and the sheriffs having thereupon returned that he was possessed of a cutter lying at one of the quays in Dublin, which they seized for his Majesty's use; an application was made to the court for a *venditioni exponas* for the sale of the cutter; but the court held that they could not grant such writ, nor do any act for disposing of the vessel, it having become part of his Majesty's property, over which the court of Exchequer only had jurisdiction. It thereupon became a question in what manner the proceedings should be removed into the Exchequer; whether by *estreat*, or by *certiorari* from the court of Chancery to remove the proceedings into that court, thence to be sent by *mittimus* into the Exchequer. And the court held that it might be either way; but that as the former method was the more expeditious and less expensive, it was therefore the more eligible. And the outlawry was accordingly *estreated*. The King against Connor in the K. B. 1771.

Court of K. B. cannot grant a writ of *venditioni exponas* to sell goods of an outlaw.

And

And afterwards upon motion in the Exchequer upon the said estreat, by the solicitor of the casual revenue, a writ of *venditioni exponas* was awarded.

Deodands.

1 Black. c. 8.

1 Hale 419.

DEODANDS. By these are meant any moveable goods which are the immediate occasion of the death of any human creature, which are forfeited to the King to be applied to pious uses and distributed in alms by his high almoner; though formerly destined to more superstitious purposes. They seem to have been originally designed in the blind days of popery as an expiation for the souls of such as were snatched away by sudden death; and for that purpose ought properly to have been given to holy church, in the same manner as the apparel of a stranger who was found dead was applied to purchase masses for the good of his soul.

Not forfeited
till the death
be found.

1 Hale 419.

But they are not forfeited till the death be found, which is regularly by the coroner; but may before the commissioners of gaol-delivery, oyer and terminer, or of the peace, if omitted by the coroner. And the inquisition ought to inquire of the goods that occasioned the death, and the value of them; and the *villata* where the mischance happened shall be charged with process for the goods or their value, though they were not delivered to them.

Cannot be
inquired of
by the grand
jury at an
assize secretly.
4 Burr. 19.

But where a man was killed by a fall from a horse, and the coroner having not taken any inquisition upon the death, the lord of the manor finding himself likely to lose his deodand made his application at the assizes, where the jury found an inquisition or presentment of the fact; the court of King's bench in Westminster-hall quashed the presentment, as being a presentment of entitling transacted in

in secret, and which the grand jury had no authority to make, at least under their general charge from the judge.

And as this forfeiture seems to have been originally founded rather in the superstition of an age of extreme ignorance than in the principles of sound reason and true policy, it hath not of late years met with great countenance in Westminster-hall; and when juries have taken upon them to use a judgment of discretion, not strictly within their province, for reducing the quantum of the forfeiture, the court of King's bench has refused to interpose in favour of the Crown or lord of the franchise.

A forfeiture
not favoured
in courts of
law.
Fost. 266.
4 Burr. 17.

WRECK. This, by the ancient common law, was where any ship was lost at sea and the goods or cargo were thrown upon the land; in which case these goods so wrecked were adjudged to belong to the King; for it was held that by the loss of the ship all property was gone out of the original owner. But this was undoubtedly adding sorrow to sorrow, and was consonant neither to reason nor humanity. Wherefore it was first ordained by King Henry I. that if any person escaped alive out of the ship it should be no wreck. And afterwards King Henry II. by his charter declared that if either on the coasts of England, Poitou, Oleron, or Gascony, any ship should be distressed, and either man or beast should escape or be found therein alive, the goods should remain to the owners, if they claimed them within three months; but otherwise should be esteemed a wreck, and should belong to the King or other lord of the franchise. This was again confirmed with improvements by King Richard I. who in the second year of his reign not only established these concessions by ordaining that the owner, if he was shipwrecked and escaped, "*omnes res suas liberas et quietas haberet*;" but

Wrecks, the
progress of
the law with
regard to
them.
1 Black. c. 8.

also, that if he perished, his children, or in default of them his brethern and sisters, should retain the property; and that, in default of brother and sister, the goods should remain to the King. And the laws so long after as the reign of Henry III. seems still to have been guided by the same equitable provisions; for then if a dog (for instance) escaped, by which the owner might be discovered, or if any certain mark were set on the goods, by which they might be known again, it was held to be no wreck. And this is certainly most agreeable to reason; the rational claim of the King being only founded upon this, that the true owner cannot be ascertained.

The present
legal notion
of them.

But afterwards, in the statute of Westminster the first, the law is laid down more agreeable to the charter of King Henry II. and upon that statute hath stood the legal doctrine of wrecks to the present time. It enacts that if any living thing escape, a man, a cat; or a dog; (which, as in Bracton, are only put for examples) in this case, and as it seems in this case only, it is clearly not a legal wreck; but the sheriff of the county is bound to keep the goods a year and a day, that if any man can prove a property in them, either in his own right or by right of representation, they shall be restored to him without delay; but if no such property be proved within that time, they then shall be the King's. If the goods are of a perishable nature, the sheriff may sell them, and the money shall be liable in their stead.

Often granted
away by the
Crown.

This revenue of wrecks is frequently granted out to lords of manors as a royal franchise; and if any one be thus entitled to wrecks in his own land, and the King's goods are wrecked thereon, the King may claim them at any time, even after the year and day.

It

It is to be observed that, in order to constitute a legal wreck, the goods must come to land. If they continue at sea, the law distinguishes them by the barbarous appellations of *jetsam*, *flotsam*, and *ligan*. *Jetsam* is where goods are cast into the sea and there sink and remain under water. *Flotsam* is where they continue swimming on the surface of the waves. *Ligan* is where they are sunk in the sea but tied to a cork or buoy in order to be found again. These are also the King's if no owner appears to claim them; but if any owner appears, he is entitled to recover the possession. For even if they be cast over board without any mark or buoy, in order to lighten the ship, the owner is not by this act of necessity construed to have renounced his property; much less can things *Ligan* be supposed to be abandoned, since the owner has done all in his power to assert and retain his property. These three are of admiralty jurisdiction, and accounted so far a distinct thing from the former, that by the King's grant to a man of wrecks, things *jetsam* *flotsam* and *ligan* will not pass.

Jetsam
flotsam and
ligan.

Of admiralty
jurisdiction.

Wrecks, in their legal acceptation, are at present not very frequent; it rarely happening that every living creature on board perishes; and if any should survive, it is a very great chance, since the improvement of commerce, navigation, and correspondence, but the owner will be able to assert his property within the year and a day limited by law.

Wrecks not
frequent.

And in order to preserve this property entire for him, and if possible to prevent wrecks at all, our laws have made many very humane regulations; in spirit quite opposite to those savage laws which formerly prevailed

By means of
salvage.

in all the northern regions of Europe, permitting the inhabitants to seize on whatever they could get as lawful prize. For by the statute of 2 Ed. III. c. 13. if any ship be lost on the shore, and the goods come to land, (so as it be not legal wreck) they shall be presently delivered to the merchants, they paying only a reasonable reward to those that saved and preserved them, which is called salvage. And by the 4 Geo. I. c. 4. and 17 Geo. II. c. 11. further salutary regulations are made for the encouragement of the assistance and salvage of ships stranded or in distress.

Treasure
trove 1
1 Black. c. 8.

TREASURE TROVE is money, or coin, gold, silver, plate, or bullion, found hidden in the earth, or other private place, the owner thereof being unknown; in which case such treasure belongs to the King; but if he that hid it be known, or afterwards found out, the owner and not the King is entitled to it. Also if it be found upon the earth, or in the sea, it doth not belong to the King, but to the finder if no owner appears; so that it seems it is the hiding, not the abandoning of it, that gives the King a property; and this distinction clearly appears from the different intentions which the law implies in the owner. A man who hides his treasure in a secret place evidently does not mean to relinquish his property; but reserves a right of claiming it again when he sees occasion; and if he dies and the secret dies with him, the law gives it to the King as part of his royal revenue. But a man who scatters his treasure upon the publick surface of the earth, or into the sea, is construed to have absolutely abandoned his property, and returned it into the common stock, without any intention of reclaiming it; and therefore it belongs, as in a state of nature, to the first occupant or finder; unless the owner appears and asserts his right, which then
proves

proves that the loss was by accident, and not with an intent to renounce his property.

GOLD and SILVER MINES are another branch of the royal revenue, which has its original from the King's prerogative of coinage, in order to supply him with materials. By the old common law, if gold or silver be found in mines of base metal, according to the opinion of some, the whole was a royal mine, and belonged to the King. But now by the statute of 4 Anne c. 12. no mines of copper, tin, iron, or lead, shall be adjudged to be a royal mine, altho gold or silver may be extracted thereout. And all persons that shall be proprietors of any mines wherein any ore shall be discovered, and in which there is copper, tin, iron, or lead, shall hold and enjoy the same; but the King is to have the ore at certain prices in the act stated.

Gold and
silver mines,
1 Black. c. 8.

C H A P. XVII.

OF ESCHEATS AND FORFEITURES.

Escheats
what.
2 Blackf.
c. 15.

ESCHEAT is one of the fruits and consequences of feodal tenure, being the determination of the tenure, or dissolution of the mutual ties between the lord and tenant, from the extinction of the blood of the latter, by either natural or civil means. If he die without heirs of his blood, or if his blood be corrupted and stained by commission of treason or felony, whereby every inheritable quality is entirely blotted out and abolished; in such cases the land escheats or falls back to the lord of the fee, that is the tenure is determined by breach of the original condition expressed or implied in the feodal donation. In the one case there are no heirs subsisting of the blood of the first feodatory or purchaser, to which heirs alone the grant of the feud extended; in the other, the tenant by perpetrating an atrocious crime shows that he is no longer to be trusted as a vassal, having forgotten his duty as a subject; and therefore forfeited his feud, which he held under the implied condition that he should not be a traitor or a felon; the consequence of which in both cases is, that the gift being determined results back to the lord who gave it.

Of two sorts,
ibid.

ESCHEATS are frequently divided into these *propter defectum sanguinis*, and those *propter delictum tenentis*; the one sort, if the tenant dies without heirs; the other, if his blood be attainted. But both these species may well be compre-

comprehended under the first denomination only, for he that is attainted suffers an extinction of his blood as well as he that dies without relations. The inheritable quality is expunged in one instance and expires in the other; or as the doctrine of escheats is very fully expressed in Fleta "*Dominus feodi loco hæredis habetur, quoties per defectum vel delictum extinguitur sanguis tenentis.*"

ESCHEATS arising merely upon deficiency of the blood, whereby the descent is impeded, are first, when the tenant dies without any relations on the part of any of his ancestors; secondly, when he dies without any relations on the part of those ancestors from whom his estate descended; thirdly when he dies without any relations of the whole blood. In two of these cases, the blood of the first purchaser is certainly, in the other it is probably, at an end; and therefore in all of them the law directs that the land shall escheat to the lord of the fee. For the lord would be manifestly prejudiced, if, contrary to the inherent condition tacitly annexed to all feuds, any person should be suffered to succeed to lands, who is not of the blood of the first feudatory, to whom for his personal merit the estate is supposed to have been granted.

Thro' deficiency of blood, *ibid.*

By attainder for treason or felony the blood of the person attainted is so corrupted as to be rendered no longer inheritable.

Or by corruption of blood, *ibid.*

But this species of escheat must be distinguished from forfeiture of lands to the King; which, by reason of their similitude in some circumstances, and because the Crown is very frequently the immediate lord of the fee, and therefore entitled to both, have been often confounded

This to be distinguished from forfeiture. *ibid.*

ed

ed together. Forfeiture of lands and of whatever else the offender possessed was the doctrine of the old Saxon law, as a part of the punishment for the offence, and does not at all relate to the feudal system, nor is the consequence of any signiory or lordship paramount; but, being a prerogative vested in the Crown, was neither superseded nor diminished by the introduction of the Norman tenures; a fruit and consequence of which escheat must undoubtedly be reckoned. Escheat therefore operates in subordination to this more ancient and superior law of forfeiture.

How it is occasioned,
ibid.

The doctrine of escheat upon attainder, taken singly, is this; that the blood of the tenant by the commission of any felony (under which denomination all treasons were formerly comprized) is corrupted and stained, and the original donation of the feud is thereby determined; it being always granted to the vassal on the implied condition of *dum bene se gesserit*; upon the thorough demonstration of which guilt by legal attainder, the feudal covenant and mutual bond of fealty are held to be broken; the estate instantly falls back from the offender to the lord of the fee; and the inheritable quality of the blood is extinguished and blotted out for ever.

And operates
as to estates
vested, ibid.

In this case the law of feudal escheats was brought to England at the conquest, and in general superadded to the ancient law and forfeiture; in consequence of which corruption and extinction of hereditary blood the land of all felons would immediately revert in the lord, but that the superior law of forfeiture intervenes, and intercepts it in its passage; in case of treason for ever; in case of other felony, for only a year and a day; after which time

time it goes to the lord in a regular course of escheat, as it would have done to the heir of the felon, in case the feudal tenures had never been introduced. And that this is the true operation and genuine history of escheats will most evidently appear from this incident to gavel-kind lands, which seem to be the old saxon tenure, that they are in no case subject to escheat for felony, tho' they are liable to forfeiture for treason.

Hitherto we have only spoken of estates vested in the offender at the time of his offence or attainder. And here the law of forfeiture stops; but the law of escheat pursues the matter still farther, for, the blood of the tenant being utterly corrupted and extinguished, it follows, not only, that all he now has should escheat from him, but also that he should be incapable of inheriting any thing for the future.

And as to incapacity of inheriting, *ibid.*

This may further illustrate the distinction between forfeiture and escheat. If therefore a father be seized in fee, and the son commits treason, and is attainted, and then the father dies; here the land shall escheat to the lord; because the son, by the corruption of his blood, is incapable to be heir, and there can be no other heir during his life; but nothing shall be forfeited to the King; for the son never had any interest in the land to forfeit. In this case the escheat operates, and not the forfeiture; but in the following instance the forfeiture works, and not the escheat. As where a new felony is created by act of parliament, and it is provided that it shall not extend to corruption of blood; here the lands of the felon shall not escheat to the lord, but yet the profits of them shall be forfeited to the King so long as the offender lives.

Distinction between forfeiture and escheat illustrated, *ibid.*

Corruption
of blood ob-
structs de-
cent, *ibid.*

There is yet a further consequence of the corruption and extinction of hereditary blood which is this; that the person attainted shall not only be incapable himself of inheriting, or transmitting his own property by heirship, but shall also obstruct the descent of lands or tenements to his posterity, in all cases where they are obliged to derive their title through him from any remoter ancestor. The channel, which conveyed the hereditary blood from his ancestors to him, is not only exhausted for the present, but totally dammed up and rendered impervious for the future. This is a refinement upon the ancient law of feuds, which allowed that the grandson might be heir to his grandfather, tho' the son in the intermediate generation were guilty of felony. But, by the law of England, a man's blood is so universally corrupted by attainder, that his sons can neither inherit to him nor to any other ancestor, at least on the part of their attainted father.

considered as
unreasonable
and unjust,
ibid.

This corruption of blood thus arising from feudal principles, but perhaps extended farther than even those principles will warrant, has been long looked upon as a peculiar hardship; because the oppressive parts of the feudal tenures being now in general abolished, it seems unreasonable to reserve one of their most inequitable consequences; namely that the children should not only be reduced to present poverty (which however severe is sufficiently justified upon reasons of publick policy) but also be laid under future difficulties of inheritance, on account of the guilt of their ancestors. And therefore, in most (if not all) of the new felonies created by parliament since the reign of Henry the VIII. it is declared that they shall not extend to any corruption of blood. But as in some of the acts for creating felonies, (and those

those not of the most atrocious kind) this saving was neglected or forgotten to be made, it seems to be highly reasonable and expedient to antiquate the whole of this doctrine by one general law.

The natural justice of FORFEITURE, or confiscation of property [for treason, is founded on this consideration, that he who hath thus violated the fundamental principles of government, and broken his part of the original contract between King and people, hath abandoned his connexions with society, and hath no longer any right to those advantages which before belonged to him purely as a member of the community; among which social advantages the right of transferring or transmitting property to others is one of the chief.

Forfeiture on what founded
4 Black. c.
29. 1 Black.
c. 8.

FORFEITURE is twofold, of real and of personal estates. First, as to real estates; by attainder in high treason a man forfeits to the King at common law all his lands and tenements in fee simple; and all leases for lives or freeholds descendable; (and all rights of entry thereon) which he held at the time of the offence committed, or at any time afterwards. This forfeiture relates backwards to the time of the treason committed, so as to avoid all intermediate sales and encumbrances. But it does not take effect unless an attainder be had, of which it is one of the fruits; and therefore if a traitor dies before judgment pronounced, or is killed in open rebellion, or is hanged by martial law, it works no forfeiture of his lands; for he never was attainted of treason.

of real estates, by common law, 4 Black. c. 29. Fost. 223.

In what cases
vested in the
King without
office,
2 Hawk. 448.

And the lands so forfeited by attainder are actually vested in the King without any office; because they cannot descend, the blood being corrupted; and they cannot be in abeyance. But by the common law such lands were not vested in the actual possession of the King during the life of such offender without an office.

By statute.

1 Hale. 240.

By the 28 Hen. VIII. c. 7. every offender convicted of high treason by presentment, confession, verdict, or process of outlawry, shall forfeit to the King all lands which such offender shall have of any estate of inheritance (under which words estates in tail are comprehended) at the time of such treason committed or after; saving to every person other than the offenders, their heirs, and successors, all rights, &c.

And by 27 Eliz. c. 1. all offenders convicted of any high treason, by any act of parliament, confession, verdict, or process of outlawry, shall forfeit as well all such rights, entries, and conditions, as also all such lands, tenements and hereditaments, which any such offenders shall have of any estate of inheritance, in use or possession, by any right, title, or means, at the time of any such treason committed, or at any time after. And the King shall be adjudged in actual and real possession of all such lands, tenements, &c. of the offenders so attainted without any office or inquisition to be found of the same; saving to every person other than the offenders in any treasons, their heirs and successors, and such persons as claim to any of their uses, all such rights as they shall have at the day of the committing such treasons, or at any time afore, as if this act had never been made.

Secondly,

Secondly, as to personal estates. The forfeiture of goods and chattels accrues in every one of the higher kinds of offence; in high treason or misprision thereof, petit treason, felonies of all sorts, whether clergyable or not, self murder or felony *de se*, and in petty larceny.

Forfeiture of personal estates.
4 Black. c. 29.

There is a remarkable difference or two between the forfeiture of lands and of goods and chattels.

First, lands are forfeited upon attainder, and not before; goods and chattels are forfeited by conviction; because in many of the cases where goods are forfeited there never is any attainder, which happens only where judgment of death or outlawry is given; therefore in those cases the forfeiture must be upon conviction, or not at all; and being necessarily upon conviction in those, it is so ordered in all other cases; for the law loves uniformity.

Lands forfeited only upon attainder, goods by conviction.

Secondly, in outlawries for treason or felony lands are forfeited only by the judgment; but the goods and chattels are forfeited by a man's being first put in the exigent, without staying till he is *quinto exactus*, or finally outlawed; for the secreting himself so long from justice is construed a flight in law.

In outlawries lands forfeited only by the judgment, but goods by the exigent.

Thirdly, the forfeiture of lands has relation to the time of the fact committed, so as to avoid all subsequent sales and encumbrances; but the forfeiture of goods and chattels has no relation backwards, so that those only which a man has at the time of conviction shall be forfeited. Therefore a traitor or felon may *bona fide* sell any of his chattels real or personal, for the sustenance of himself and family, between the fact and conviction; for personal property

Forfeiture of lands relates to the time of the fact, of goods to the conviction.

property is of so fluctuating a nature that it passes through many hands in a short time, and no buyer could be safe if he were liable to return the goods which he had fairly bought, in case any of the prior vendors had committed a treason or felony. Yet if they be collusively and not *bona fide* parted with, merely to defraud the Crown, the law will reach them; for they are all the while truly and substantially the goods of the offender; and as he, if acquitted, might recover them himself, as not parted with for a good consideration; so, in case he happens to be convicted, the law will recover them for the King.

Of forfeitures
on outlawries
in civil cases.
3 Bac. abr.
754.

Besides those forfeitures in criminal cases, there is a forfeiture upon outlawries in civil cases; for the retiring from the inquiry of justice is held so criminal in the eye of the law that it is punished with the loss of the offender's goods and chattels, and the issues and profits of his real estate.

The King
thereby ac-
quires only a
pernancy of
the profits.
ibid.

But by such outlawry the King has no estate, but only a pernancy of the profits, nor can he manure or sow the ground; and his interest continues no longer than the party hath an estate, and determines with the party's death; and being originally introduced to compel the defendant to come in the sooner and answer the plaintiff's demand, it may more easily be superseded or reversed, and thereby the King's pernancy of the profits discharged, than an outlawry in a capital case.

Cattle of a
stranger may
be taken on a
levari for the
King.
Salk. 395.

And the cattle of a stranger, *levant* and *couchant* on lands extended on an outlawry, may be taken for the King upon a *levari facias*, as the issues and profits of the lands; for otherwise there might be no issues at all, or the person
outlawed

outlawed might defraud the King of the whole by letting the land to pasturage.

By the bare outlawry the party immediately forfeits his personal goods, and they are vested in the King; but he does not forfeit the profits of his lands nor his chattels real till inquisition taken. And therefore an alienation *bona fide*, after outlawry and before inquisition, is good to bar the King of the pernancy; but if the outlaw make a feoffment after inquisition, the feoffee has the estate, and the King shall have the profits.

Goods forfeited by the outlawry, but profits of lands or chattels real not till inquisition. Salk. 395. Hard. 101. 176. 1 Lev. 33.

C H A P. XVIII.

OF LANDS PURCHASED BY ALIENS.

AN alien born may purchase lands or other estates; but not for his own use, for the King is thereupon entitled to them. If an alien could acquire a permanent property in lands, he must owe an allegiance equally permanent with that property to the King of Great Britain, which would probably be inconsistent with that which he owes his own natural sovereign; besides that thereby the nation might in time be subject to foreign influence, and feel many other inconveniencies.

An alien may purchase for the benefit of the Crown. 1 Black. c. 10.

But there must be an office or inquisition found, to entitle the King to such purchase; for since the freehold is in the alien, and he is tenant to the lord of whom the lands are holden, it cannot be divested out of him but by some notorious act, by which it may appear that the freehold is in another. But if an alien who purchases lands die, then the

In what case there must be an office found. Co. Lit. 2.

the freehold is in the King, without office found; because no man can take it as heir to the alien, and therefore the freehold is cast upon the King. But if an alien purchase, and afterwards is made a denizen and then has issue and dies, the issue shall inherit till office found; because there is a person in being to take as heir to the denizen, upon whom the law casts the freehold, which is not to be divested out of him without the solemnity of an office.

An alien merchant may take an house for his abode. Co. Lit. 2. 6. Poph. 36.

An alien cannot purchase a lease for years of lands; but if he be a merchant he may take a lease of an house for his habitation for years only; and this is for the encouragement of commerce; but if he depart the kingdom or die, it goes to the King, and not to his executors or administrators; because it was only a personal privilege annexed to the alien as a merchant, and which consequently must expire with him.

The Crown has a right to a discovery in a court of equity.

The King has the same right to the aid of a court of equity for a discovery of the facts on which his title is grounded as the subject has in ordinary cases, and founded on the same principle of justice, viz. that it is against conscience for one to enjoy another's property by concealing his property. So determined in the court of Exchequer in Westminster-hall, in the case of the Attorney general, against Rose Dupleffis, Michaelmas 1751, upon an information in the nature of an English bill for an estate devised to the defendant who was an alien, and afterwards confirmed upon an appeal to the house of lords.

CHAP.

C H A P. XIX.

OF FORFEITURES IN MORTMAIN.

THE Clergy in former days had so great an ascendant over the people by instilling into them notions of purgatory, and had so wrought on them by their art and management, that they prevailed on them to be very liberal of their possessions, and especially at their deaths to dispose of them to those only who could promise them happiness in another world. This proving very prejudicial to the lords, who thereby lost the advantages of wardships, marriage, relief, escheat, &c. (lands in the hands of a religious house or person being considered as in a dead hand, *manus mortua*, yielding no fruits to the lord) occasioned the clause of the statute of *magna charta* 9 Hen. III. c. 56. by which it is enacted, that it shall not be lawful for any one to give his lands to any religious house and to take the same lands again to hold of the same house, &c.

Occasion of the clause in the statute of *magna charta* to prevent giving lands to religious houses, &c.

But aggregate ecclesiastick bodies found means to avoid this statute by purchasing lands holden of themselves, and by taking long leases. Also all ecclesiastical sole corporations, as bishops, &c. thought themselves out of this statute. To meet therefore with these evasions the 7 Ed. I. Eng. called the statute of mortmain, was made. By which it is provided, that no person, religious or other, should buy or sell or receive, under colour of a gift or term of years, or

How evaded, but afterwards farther enforced by 7 Ed. I.

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any

any other title whatsoever, nor should by any art or ingenuity appropriate to himself, any lands or tenements in mortmain, upon pain that the immediate lord of the fee, or on his default for one year the lords paramount, and in default of all of them the King, might enter thereon.

Further artifice of the clergy to elude the aforesaid statutes by feigned recoveries.

The clergy when they found themselves prohibited by *magna charta* from purchasing lands, and perceived that their evasion of that law was provided against by 7. Ed. I. began to apply the judgments of the courts to their own advantage against the intention of the law; for they brought their *precipe* against the tenant who had agreed either to give or sell them the lands on demand, and prosecuted the suit as if it had been really an adversary one; till the tenant according to the precedent agreement made default, which was always looked upon as sufficient ground for a judgment in favour of the defendant. And the judges, presuming all recoveries just and lawful which were prosecuted in the usual course of law, would not bring those covinous ones within the statute, though they were apparently in *fraudem legis*, and attended with all those inconveniencies which those statutes were made to prevent.

restrained by 13 Ed. I.

But the clergy were quickly stopped in this course; for 32 Westm. 2. 13 Ed. I. Eng. made these recoveries by default to be mortmain; and the exposition of this statute by the judges has been carried as far beyond the letter as their exposition on 7 Ed. I. seems to have fallen short of the meaning and intention of that law; for though the letter of this act extends only to recoveries by default, yet they, and with good reason, have extended it to all other recoveries, whether by demurrer or verdict or otherwise; for if these should not be within the meaning of the act
an

an issue might be taken so much in favour of the clergy, and the evidence offered might be so weak, that the whole intention of the statute would be eluded. 2 Inst. 75. 429.

Afterwards they found out the method of conveying to uses, which was first introduced to evade the statutes of mortmain and served them effectually; for they generally sitting in Chancery, where uses were solely cognizable, obliged the feoffee to execute the use according to the trust and confidence reposed in him.

Further evasion contrived by the clergy by conveying to uses.

But this mischief was provided against by the stat. 15 Rich. II. cap. 5. Eng. by which it is declared that if any be seized of any lands or other possessions to the use of any spiritual person, with purpose to amortize them, and whereof such spiritual person takes the profits, they shall cause them to be amortized by the license of the King and other lords, or dispose of them to some other use; otherwise they shall be forfeit, according to the form of the statute of 15 Rich. 2. as lands purchased by people of religion; and that no such purchase to the use of such spiritual persons shall be thereafter made upon like pain. And that the same law shall likewise be of lands or other possessions purchased to the use of guilds and fraternities. And that lands purchased by corporations, or to their use, shall be within the compass of the said statute *de religiosis*.

Remedied by 15 Ric. II. 5.

And whereas the statutes had been eluded by purchasing large tracts of land adjoining to churches and consecrating them by the names of church-yards, such contrivance is also declared to be within the compass of the statutes of mortmain.

Y 2

But

Feoffments
to the uses of
bodies not
corporate for
superstitious
purposes re-
strained by
23 Hen. VIII.
c. 10. Eng.

Salk. 162.

But during the times of popery, feoffments and other assurances were frequently made of lands, &c. to the use of parish churches, chapels, fraternities, and other bodies not corporate, for superstitious purposes; which though not strictly alienations in mortmain were within the same mischief; to prevent which, by the stat. 23 Hen. VIII. c. 10. Eng. it is enacted that all such uses shall be void. And tho' there is no statute to that effect in force in this kingdom, yet it is holden that the King as head of the church and state is intrusted by the common law to see that nothing be done in maintenance or propagation of a false religion, and to direct and appoint all such superstitious uses to such as are truly charitable.

Whether a
devise be a
conveyance
in mortmain.

A devise to a corporation is not, it should seem, within the statutes of mortmain so as to entitle the Crown; for such devise is by the stat. 10. Car. I. Sess. 2. c. 2. void; and therefore the lands so devised shall descend to the heir at law *. See Hob 136.

Whether
leases for
years are
within the
statutes of
mortmain.

It seems not clearly settled whether long leases for years are within the statutes of mortmain. Brook in his abridgement says that a lease for 400 years is, for that 7 Ed. I. mentions a term amongst other contrivances of eluding the law; but that a lease for 100 years is not within the statute, being an usual lease. Br. mort. pl. 39. cites 29 Hen. VIII. And in another place he says that a rent charge for 80 years is within the statute. Ibid. pl. 39 cites 4 Hen. 6, 9.

* See the proceedings on the will of doctor Baldwyn, formerly provost of Trinity college, in the appendix.

C H A P. XX.

OF THE MANNER OF PASSING SHERIFFS ACCOUNTS.

THE sheriff is the King's bailiff of his county, and was anciently the receiver of all the King's revenue arising therein. There were several farms of the county that were under his particular care, that is to say, all those farms that were held of the King as of his county. These were under the survey of the sheriff, and he was charged with them, being obliged to answer them in all wants; and for these he pays in his * *profers*, because they were reckoned part of the profits of his bailiwick. But the receipt of all the ordinary or certain part of the revenue is long since turned into other channels, and he is now accountable to the King only for what is called the casual revenue.

The sheriff
the ancient
receiver of
the King's
revenue.
Gillb Ex. 144.
Madox 643.

Every sheriff before he takes upon him the exercise of his office is to enter into a recognizance of £500 with two sufficient † sureties, conditioned that he shall by himself or his attorney make his *profers*, at the Exchequer, on the morrow of the close of Easter and St. Michael, of the issues and profits of his bailiwick; and at Easter term,

His recogni-
zance.

* The *profer* was a pre-payment made by the sheriff out of the issues of his bailiwick. Madox 644. For this the sheriffs now pay 15 sh.

† But it does not appear that the security has been sued whilst the sheriff has been sufficient.

before

before the Ascension, make a § view of his accounts of the issues and profits of his said bailiwick, and satisfy at the receipt of the Exchequer all such sums of money as shall grow due to his Majesty upon the said view, before the end of the said term; and also that he shall appear as aforesaid before the Barons, on the morrow of All Souls, to make a true account of the issues and profits of his said bailiwick, and satisfy and pay all such sums of money, goods, and other casualties and things, as he shall receive or levy in respect of his Majesty's revenue, or casualties whatsoever, &c.

Times of
issuing the
several pro-
cesses to him.

And the manner of the sheriff's accounting at this day is as follows. There issue twice in every year, viz. in Hillary and Trinity vacations, the summonister's process and the process of the pipe, to the several sheriffs of the kingdom; the former for the levying all fines, amerciaments, post-fines, forfeited recognizances, and such like, which come by estreat into the Exchequer; and the latter for levying such sums as were *nil'd* on the summonister's process, and formerly for all the certain revenue of the Crown, such as the Crown rents; as it still does for custodiam rents, though these are accounted a part of the casual revenue.

And what is *nil'd* on the second summons of the pipe is, as is before mentioned, sent down in the *schedula pipe* into the office of the second remembrancer, who thereon, once a year, viz. in Trinity vacation, sends out the long or prerogative writ against goods, body, lands, heirs, executors and administrators.

§ The view was the entrance or forepart of the sheriff's account, which stood *de bene esse*, whilst he was purifying or liquidating it, by producing his warrants and vouchers, whereby he was to have an allowance or discharge of any sums charged on him. Madox 644.

And

And the several sheriffs of the kingdom are prefixed on their accounts as follows.

Days of pre-
fixion to the
several
sheriffs.

MICHAELMAS TERM.

County of Dublin, City of Do.	}	on the morrow of All Souls.
County of Kildare,		
County of Meath,		
Town of Drogheda,		

County of Carlow,	}	in eight days of St. Martin.
King's County,		
Queen's County,		
County of Kilkenny, City of Do.		

County of Westmeath,	}	on the morrow of St. Martin.
County of Louth,		
County of Wexford,		
County of Wicklow,		

County of Longford,	}	in fifteen days of St. Martin.
County of Waterford,		
City of Do.		
County of Cavan,		

HILLARY

HILLARY TERM.

County of Tipperary,	}	in eight days of St. Hillary.
County of Roscommon,		
County of Leitrim,		
County of Down,		
County of Monaghan,		
County of Armagh,		

County of Tyrone,	}	on the morrow of the Purification.
County of Donegal,		
County of Limerick,		
City of Do.		
Town of Carrickfergus.		

County of Mayo,	}	in fifteen days of St. Hillary.
County of Fermanagh,		
County of Sligo,		
County of Galway,		
Town of Do.		
County of Antrim,		

County of Cork,	}	in eight days of the Purification.
City of Do.		
County of Clare,		

EASTER TERM.

City and county of Londonderry,	}	in fifteen days of Easter.
County of Kerry,		

This

This prefixion being in the nature of a summons to the sheriff to come in and make his *profers* and account, if he make default, the present course is to give him four days further, under a pain, to attend. And formerly the practice was to enter those fines from four days to four days until three fines, viz. £10, £20, and £40, were set on him for his default; and then, if he did not attend, an attachment to the pursuivant issued against him. But now no more than one fine is imposed in every issuable term, which is a great indulgence to sheriffs *.

The proceedings against them for default.

When a sheriff attends to account, he is to be sworn in court by the chief remembrancer to give a true and just account of all such sums of money as he has levied or lawfully might have levied to his Majesty's use. (See Dalt. ch. 123.) When this is done, the treasurer's remembrancer enters a rule of course for a day for the sheriff's being apposed in court. But before his apposal he is to prepare for the passing of his accounts in the following manner, viz.

Matters preparatory to the sheriff's accounting.

He is first to make a copy of all the process which has issued to him from the several offices in a book for that purpose.

Making copy of process.

Then to go to the summonister and to compare with him all the process issued from that office, and to mark the sums he *tots* himself with in the margin of his book.

Comparing, &c. with the summonister

* Anciently it seems in this kingdom (and it is said the course is now so in England) if the sheriff did not attend his day of prefixion, £5 per day being set on him as a fine for four days together for his default, then an attachment, and also a seizure *nomine districtionis* issued against him for his non-attendance. See Madox 644. Gilb. Treat. of the Exch. 146.

And with the
foreign ap-
poser.

Then he is to bring the same process to the foreign apposer and compare and lodge it with him.

And with the
clerk of the
pipe.

Then to bring all the process of the pipe to the clerk of the pipe, *totting* as aforesaid.

And with the
comptroller.

Then to bring the same process to the comptroller of the pipe and compare with him, *totting* as aforesaid, and lodge the process with him.

And with the
treasurer's
remem-
brancer.

Then to bring all the process issued from the treasurer's remembrancer and compare with him, *totting* as aforesaid, and to lodge the process with him, as also an inquisition which the sheriff must take in the county, &c.

And with the
clerk of the
first fruits.

Then to go to the first fruits office, and if he has any process from thence he is to examine and lodge them there.

Giving notice
of his appofal.

And he is to give notice to each office as he passes through, as also to the Auditor general, and the clerk or Solicitor for the casual revenue, of the day of his appofal.

Auditor ge-
neral's duty
during the
appofal.

The Auditor general is to sit in court during the appofal of the sheriff to take an account of the *tots* in the several processes, and to cast them up, and to give in the total sum to the treasurer's remembrancer, who enters it in his book.

The court
will give ne-
cessary orders.

And during the account the court will give such orders as are requisite for the securing of the said debts, or for the release of the subject. If the sheriff make an insufficient or an unsatisfactory answer they will order him to *tot* for such charge. But in such case the sheriff may have a writ

a writ of assistance to levy the money; as he may in all cases where he charges himself with any money he has not received.

After he is apposed, he is to get a *constat* of his fines and proffers from the Chief remembrancer, a *constat* from the treasurer's remembrancer of the sums charged in his process, a *constat* from the summonister and clerk of the estreats of attainders, if any, if not, that there are none; and a *constat* from the clerk of the first fruits; which four *constats* must be lodged with the Auditor general, together with his own certificate of what waifs, estrays, felons or fugitives goods, if any, came to his hands, or if none, a negative certificate. Then he is to get a transcript upon those *constats* and certificate from the Auditor general, and a transcript also from the foreign apposer of what he charged himself with in the summonister's process; which two transcripts are to be signed by the three Barons, and the transcript from the Auditor is to be entered with the second remembrancer. Then he is to get his certificate of * allowance from the summonister and clerk of the estreats, and a *constat* from the comptroller of the pipe of the sums charged in his process; all which are to be fixed together and lodged with the clerk of the pipe, who then makes out the sheriff's † *debet* thereon, which shows what money

Z 2 he

*Constats to be
got by the
sheriff after
apposal.*

* This is an allowance of 5l. 2s. each sessions for treating the justices and clerk of the peace at the quarter sessions; provided that eight of the justices certify at the foot of the estreat that the sheriff expended so much. And this allowance is to be out of the session fines if so much be solvent; if not, the deficiency is to be out of his own pocket.

† It is worth observing that the clerk of the pipe omits inserting in those *debets* all such sums which the sheriffs *tot* for in the summonister's process, and which he conceives to be dischargeable or reducible; which not only is a considerable loss to the casual

he is to pay. Then he is to bring the *debet* to the treasury, pay in the money, and get an Exchequer acquittance for it, which he is to bring back to the pipe office, to be annexed to his account. And if there be no charge standing out on his account he may have his *quietus*; but if there be, he cannot have it until he has fully cleared his account.

Old practice, as to compelling sheriff to pay his tots &c. by fine and attachment.

Formerly the sheriff after apposal had but six days by the rules and course of the court to bring in his accounts from the several offices, to get his *debet* from the pipe office, and pay his tots into the receipt of the Exchequer. And if he neglected to pay his tots accordingly, the clerk of the pipe having certified his default to the treasurer's remembrancer, the course was to set three fines upon him, giving him four days between each fine; and if he still neglected, then there went an attachment to the pursuivant against him.

No sheriff to be attached for any neglect relative to his account but by writ, or warrant.

And the practice was, when the sheriff was brought in on such attachment, to make him account in custody and not depart till he had finished it. *

And

casual revenue, but tends to frustrate the execution of justice, as forfeited recognizances and fines imposed on officers of justice for breach of duty, and on other offenders, are contained in this process. Besides, several of these sums have been actually levied, and are in the hands of the sheriffs; and the delinquents, from the length of time sheriffs have to pay in their *tots*, have had full opportunity of applying to reduce or discharge them. Wherefore, it seems proper, that the clerk of the pipe should include these *tots* in the summoner's process in the *debet*, as well as others, or as the sums which are *totted* for in the process of the pipe, and of the second remembrancer, if not discharged or reduced at the time he delivers his *debet*; as by not doing so, the tots in this process are attended with the same mischief as the *onies* in the pipe process, viz. the keeping the accounts of sheriffs standing out for years. Note, post fines for licences to accord are also in the summoner's process.

* Formerly when an attachment issued to the pursuivant against a sheriff for not accounting, not paying his tots, or not clearing his accounts; he could not be discharged

And by a general rule, sheriffs who neglected to pay their tots, or finish their accounts in due time were to stand committed, and the pursuivant was to take them into custody, without further order, to prevent which there is a clause in the stat. 12 Geo. I. c. 4. that no sheriff or subsheriff shall be attached by any officer of the court of Exchequer or other person, for not being apposed on any writ or process, for not finishing his accounts in due time, or for any contempt or neglect relating to his account, but by writ under the seal of the court, or by warrant for that purpose to be signed by the Lord Chief Baron, or in his absence by either of the other Barons, to be executed by the pursuivant of the court or his deputy, in which warrant the name of such sheriff, &c. shall be particularly inserted and his offence particularly specified. Ibidem.

Afterwards * this practice was altered, and when the several sheriffs came upon their accounts, the court gave them four days for paying into the treasury the several sums Altered to
fines *ad infinitum*.

charged therefrom but by a *superfedeas*, in consequence of an order of court for the purpose, on his shewing, by the treasury acquittance or clerk of the pipes certificate, that the tots were paid, and lodging the same with the second remembrancer; as appears amongst others, by the rules of this court of the 31 Jan. 1737, 21 and 25 July 1739 and 25 Apr 1740. Whereas of late years the pursuivant has taken upon him to discharge such persons from attachments, without such authority, upon lodging the money with him; whereby the accounts in such cases have stood uncleared for years; and the money all the time remained in the pursuivant's hands.

* It may be here observed that until the year 1704, it seldom appears that more than three fines were imposed upon sheriffs either for not accounting, not paying their tots, or not finishing their accounts, but then the fines began to be more excessive, and the process of attachment was neglected; and from the year 1709,

sums with which they had totted themselves; which if they failed to do, the court at the instance of the second remembrancer, the first of the eight days after each issuable term, entered of course a conditional fine of five pounds on them, unless they paid their tots in four days; which if they neglected to do, that fine was made absolute and a further fine imposed, which was always double the last; and at the end of the term these fines issued in process to the succeeding sheriffs. If the sheriffs did not pay in their tots before the following issuable term, the court on motion began to fine them *de novo*, and continued so to do every such term, until their tots were paid in and their accounts cleared; which fines have some times amounted to £1200 and upwards, and were, as the former, issued in process to the succeeding sheriffs.

1709, until lately, fines were set on sheriffs without end for their neglect, and no other process whatsoever issued to compel them to this part of their duty. This practice was of great prejudice not only to the revenue but likewise to the sheriffs; for after they had been apposed in court they frequently left the prosecuting their accounts to their subsheriffs, who having got the king's money into their hands neither finished their accounts nor paid the tots into the treasury. And fines only being set on them for their neglect, and these going in process to the succeeding sheriffs, the subsheriffs for the time being, to indulge the preceding subsheriffs, without the knowledge of the sheriff against whom the fine issued, *on'd* on their accounts for those fines from time to time; by which means the Crown was not only kept out of them, but sometimes by the death of the sheriffs or their sureties they were entirely lost, and the sheriffs being often deceived by their subsheriffs, who informed them that every thing had been done, never heard of the fines against them until perhaps the subsheriff and his sureties died or became insolvent; so that the sheriff found himself loaded with heavy fines, and was left to pay his tots and discharge his account at his own expense; all which would have been prevented, if the regular process of the court had issued against him.

But

But since the stat. of 23 Geo. II. c. 13. the second remembrancer does not issue any fine against a sheriff for not accounting, not paying his tots or not clearing his accounts, until six months after his apposal, and even then not but in an issuable term; so that if the apposal be in Hillary term, the first fine will not be until the Hillary term following; and as an attachment is not to issue until after a third fine is established, and as the fines are imposed but every issuable term, it will be upwards of two years before the attachment issues. The first fine imposed is £10, the second £20, and the third £40. But this practice, which is productive of very great inconvenience and delay, seems to be founded on a misconstruction of this act, *which relates to subsheriffs only.*

Late practice.

The sheriffs in their accounts totting themselves with some particulars, and in others *onying*, the course has been, to give them to the end of the next issuable term after their apposal to procure receipts and other vouchers in discharge of the sums *oni'd* for; and if they do not procure them within that time, then such fines are entered and such process are sent against them, as where they do not account or pay their tots; and for imposing such fines and issuing such process against them for such their neglect, the clerk of the pipe's certificate is the treasurer's remembrancer's warrant *.

Proceedings
against them
for sums
oni'd.

By

* Here likewise has been of late great neglect in not pursuing the usual method, and taking the regular process for compelling the sheriffs to clear their accounts; (for proceeding against them by fines only has been found ineffectual, as the sheriffs, to whom such fines issued in process, *oni'd* for them, and their successors might *oni* for them again, and so on *ad infinitum*;) whereby the Crown is defrauded,

Poundage allowed the sheriff on debts to the Crown collected by him.

By the stat. 12 Geo. I. c. 4. all sheriffs who shall levy any debts, duties, or money, (except post fines) due to his Majesty, by process to them directed upon the summons of the pipe or green wax [*or*] by *levari* out of the Exchequer, shall have an allowance on the accounts of 12 d. out of every 20s. for any sum not exceeding £100 by them levied and collected; and of 6 d. for every 20s. over and above the first hundred pounds; and for all debts, duties, and sums of money, (except post fines) due to his Majesty, by process [*on*] *fieri facias*, and extent issuing out of any of the offices of the court of Exchequer, one shilling and six pence out of every 20 shillings for any sum not exceeding one hundred pounds by them levied or collected, and 12 d. for every 20s. over and above the first £100 * provided such sheriff shall duly answer for the same upon his account by the day on which he ought to be dismissed the court, or in such time to which he shall have a day granted to finish his account.

When

defrauded, and the publick greatly injured. For the sums usually *oni'd* for, being fines and amerciaments set on sheriffs and other officers by courts of justice for neglects and misdemeanors, and recognizances forfeited in the King's bench and at assizes and sessions, which were intended as punishments, are by means hereof rendered vain and fruitless. And sometimes in fact these fines *oni'd* for have been received by the sheriffs, and by neglect of calling on them regularly to clear their accounts are sunk in their pockets and converted to their own use; but this inconvenience has been in a great measure remedied by a resolution lately made by the court of Exchequer, of not permitting sheriffs to *oni* on their accounts for former sheriffs, but making them either tot for such fines, or return inquisitions finding the estates of the persons so fined.

* This clause, by not being faithfully copied from one in the stat. 3 Geo. I. c. 15. Brit. of which it was intended to be almost a transcript, is not sense; the word *or* being thro' mistake omitted, and the word *and* being substituted in

When it appeared to the court that the subsheriff had received the King's money on the process and neglected to pay it, it has been usual for the court, at the instance and in aid of the sheriff, to grant an attachment against the subsheriff.

Penalties on subsheriffs receiving King's money and not accounting.

And by the 23 Geo. II. c. 13. if any sheriff of any county, or county of city or town corporate, shall pay his subsheriff or attorney any money, in order to be by them paid over in discharge of the accounts of such sheriff, and such subsheriff or attorney shall neglect to pay over into the treasury the sums so to them intrusted, or which such subsheriff shall receive on account of such sheriff, and to procure to be taken off, at their own costs and charges, all fines laid on such sheriff, on account of his not paying in the sums so received, within six months from the time that any such sums shall be so paid to such subsheriff or attorney, such subsheriff, or attorney, shall for ever after such failure

As also on the attornies of sheriffs.

in place of *on*. Whereby an instance is created amongst many others that might be produced, of the inattention too often given to the framing and wording Irish statutes. In the last session of Parliament, heads of a bill were brought into the House of Commons and passed there, *for the improvement of the casual revenue and for the better execution of publick justice*, by giving sheriffs, as a further encouragement to collect these branches of it, five shillings in the pound, for the sums so collected; but these heads of a bill were thrown out by the House of Lords. Such an act, it is thought if properly framed, besides improving the casual revenue, would be a great means of restraining the many riotous disorders and flagrant breaches of the publick peace throughout the kingdom. It would encourage the sheriffs to collect these casualties, which would in time prevent the offences, instead of trusting this most important matter wholly to their bailiffs, as is the case at present, and swearing a positive oath upon their apposal, on the return made by these low people; who, as well subsheriffs (it is well known) make largely thereby.

or neglect, be disabled to take or execute the office of subsheriff.

Time may be granted upon motion.

But it is thereby provided, that if any subsheriff or attorney shall apply by motion to the court to enlarge his time for paying in such money, and taking off such fines, the court may, upon proof by affidavit that the sheriff to be affected by such motion had due notice of such intended application, examine into the matter, and thereupon grant to the person so applying such further time for paying in the sums, and taking off the fines before mentioned, as to them shall appear reasonable; and in case the sums so received shall not be paid in, and all such fines taken off, within the time so allowed by the court, every subsheriff and attorney shall be liable to the penalties and disabilities aforesaid.

Forfeiture for taking on the office after incurring the disabilities.

And if any person who shall incur the disabilities aforesaid, or either of them, shall take upon him the office of subsheriff of any county or city, and be thereof convicted, he shall for every such offence forfeit £500, one moiety to his Majesty, and the other to such person as shall sue for the same.

Process to issue against Executors, &c. of sheriffs dying.

Henry Clarke, Esq; late sheriff of the county of Louth having died in office, ordered that *scire facias* do issue against his executors or administrators to compel them to enter on his accounts, 23 Jan. 1710 *.

* So where there are joint sheriffs, as in corporations, and one only has acted, upon an affidavit thereof the acting sheriff only shall be admitted to account; so where one has died who never acted, the survivor upon such affidavit shall also be admitted to account, without any *scire facias* against the executors or administrators of the deceased.

N. Loftus,

N. Loftus, Esq; late sheriff of the county of Wexford having been in a bad state of health, during his sheriffalty, and still continuing so, and not having intermeddled with the green wax process, or any other business of his office, which his Majesty was entitled to any account of, upon affidavit thereof, and that he was willing to pay all his *tots*, and such other demands as his Majesty might have on account of the said office, his personal attendance was dispensed with, and his subsheriff admitted to pass his accounts, his Majesty's attorney general consenting thereto; which it seems the court required, altho' the officer said that he had not known an instance before where, in such case the consent of the attorney general was required. 22 June 1765 †.

Sheriff admitted to account by his subsheriff.

Upon an application of the late sheriffs of the county of the town of Drogheda, to be excused from appearing and accounting, on an affidavit that they had not received any of the King's process, the court refused the motion; Baron Power observing that every sheriff is answerable *sub nomine vice comitis* for, and must pay in his *proffers*, and issues, whether he receives any of the process or not; and all waifs, estrays, goods of felons, and fugitives, &c. not granted away by the Crown, must likewise be accounted for by him as sheriff. Every sheriff therefore, as the King's ancient bailiff of his revenue, is bound by law to account, though he happen not to have received any of the process; but the not re-

Sheriffs not excused from accounting, the process not being delivered to them by the pursuivant.

† See Maddox 659, 659, &c. several instances where sheriffs and other officers accomptants to the King, were admitted to account by their attornies, and see the form of the sheriffs recognizance before.

ceiving such process is an excuse for not collecting those fines and other debts which can only be levied under such process: But if, on account of the neglect of the pursuivant in not delivering any of the process, to the sheriff the court should excuse the sheriff from appearing and accounting, not only the certain annual revenue paid unto the Crown (anciently and at this day called the sheriffs *proffers*) but the aforesaid casualties in several instances would be lost, and many other obvious ill consequences highly prejudicial to the casual revenue would follow. Mich. 1772.

Sheriff having obtained his *quietus* not to be called in question after four years.

By the stat. 7 W. III. c. 13. every sheriff who shall pass his accounts; and have his *quietus est*, his heirs, executors, &c. shall be discharged of all sums of money which he shall have levied or received, and pretended not to be accounted for, unless such sheriff shall be called in question within four years after the time of such account passed, and *quietus est*. And every officer, who shall send out any writ or process, or by whose default any writ or process shall be sent out, contrary to the act, shall for every such offence forfeit to the party grieved £40, with his costs and damages, to be recovered in any of his Majesty's courts of record in Dublin.

Persons obstructing sheriffs in the passing their accounts to make satisfaction.

And by the 12 Geo. I. c. 4. if any officer or other person concerned in the passing sheriffs accounts, shall wilfully retard or hinder any sheriff in the passing his accounts, or by his wilful neglect, absence or other undue means, prevent any sheriff from being apposed or cast out of court in due time, or, after payment or tender of their due fees in said act ascertained, shall neglect to enrol, make out, sign, and deliver his *quietus* in due time, in every such case the persons so offending shall make such

such recompence to the party aggrieved, as shall be ordered by the barons, upon complaint exhibited to them in a summary method.

Whereas the usual practice of the court is, that all sheriffs of the kingdom should pay in or legally discharge all such sums of money as upon their apposal they *tot* themselves with, within six days of their being so apposed, and the court taking notice that the several sheriffs do, after their being so apposed, neglect prosecuting, paying, or discharging their said *tots*, for considerable times, &c. to his Majesty's apparent prejudice, &c. It is ordered that every sheriff, who, within six * days after apposing as aforesaid, does not pay or legally discharge his *tots* as aforesaid, stand attached by the pursuivant of the court, until the further order of the court; whereof the said pursuivant is not to fail, but to attach the said sheriff by virtue hereof, as often as occasion shall require as aforesaid.

Rule, 19th
Nov. 1767.

Whereas by former † rules of the court the sheriffs of the several counties, cities, and townships of this kingdom were required to enter the names of their several attornies, and file their warrants of attorney in the court, to the end his Majesty's officers may know when to call for such returns from said sheriffs, as they make on his Majesty's process, which the said sheriffs hitherto failing to do. It is now ordered for the advancement and furtherance of his Majesty's service, that every attorney of

Rule, 13th
May 1672.

* This rule is not now pursued, see before, p. 172.

† Upon the strictest search for several years before, I cannot find any rule to this purpose.

the

the court, who is appointed for any of the said sheriffs, do, within six days after the receipt of their warrant of attorney file the same in this court; and every attorney that shall fail therein is to forfeit unto his Majesty the sum of £5 sterl. as a fine. And it is further ordered that all sheriffs who shall fail in electing and making their attornies, and granting and sending them such warrants as aforesaid, shall be proceeded against according to the statute in that case made and provided.

Rule, 26th
May 1684.

Upon motion of the attorney for the commissioners of his Majesty's revenue, that several of the sheriffs of this Kingdom, are very slow and remiss in prosecuting the clearing their accounts, or paying in their *tots* after they are apposed, tho' the court never gave them above six days after their apposal to pay in their *tots*, &c. Ordered that if any sheriff, who shall be apposed after this day, shall be remiss, and not pay in his *tots* in six days * after apposal, that then attachments to the pursuivant shall of course issue against him that shall be so in contempt as aforesaid.

Rule, 26th
April 1697.

It is this day ordered by the court, that their Majesty's Auditor general do, for the future, upon the passing any sheriff's accounts, give notice to Mr. Richard Thompson, and Mr. Chetwood, who are concerned for the commissioners of his Majesty's revenue, upon the passing the sheriffs accounts in the said office, to the end the said sheriffs may be fully charged for the cattle, &c.

* Vide ante.

Upon

Upon motion of Mr. Howard, solicitor for the casual revenue, it is ordered for the future, that the sheriffs of this kingdom do give notice in writing to the solicitor for the casual revenue, of their passing their accounts, to the end that the said sheriffs may be fully charged.

Rule, 3d
June, 1761.

Where a sheriff hath *totted* or *oni'd* for a former sheriff, or charged himself in his accounts, for any person whatsoever, and hath not levied the sums he so charged himself with, he may apply to the court for a writ of Assistance, which is granted upon the motion of an attorney and an affidavit at the foot of the schedule, from the pipe roll, of the several sums the sheriff charged himself with, that such sums nor any part thereof have or hath been received by him, or by any person for his use, but are still standing out; and such writ of *assistance* is in the nature of an execution, to enable the sheriff to levy the same, of the body, goods, and lands of the persons for whom he so *oni'd*, or charged himself, and an enquiry may be held thereon; and if lands be found upon such inquisition returned, a custodiam shall be granted.

Writ of
assistance in
aid of the
sheriff when
to issue.

But these *onies* for former sheriffs seldom happen of late, as inquisitions finding their estates are now expected by the court upon the process of the pipe, pursuant to the aforesaid rule of the 24th of February 1695, which rule had a long time been neglected, and these *onies* carried on from sheriff to sheriff for a course of years, to the great distress and loss to several sheriffs.

And

Inquisition
and custodi-
am thereon.

And this inquisition and the custodiam thereon are to be proceeded upon in the same manner as all others are; and when the sheriff is satisfied the sums for which the writ of *assistance* issued, either by having received them, by their having been discharged by the court, or paid into the treasury by the persons chargeable therewith, the custodiam may be dissolved on a consent of the attorney for the sheriff at whose suit the writ of *assistance* had issued, the rule of which is entered of course.

Custodiam a-
gainst sheriffs
for not clear-
ing their ac-
counts.

So, where the custodiam is upon process at the suit of the Crown, against the sheriff for not clearing his accounts, on the sheriffs against whom the same had issued, discharging the fines and reducing the recognizances for which the *onies* were, and paying the reduced sums into the treasury, an order is conceived, on consent of the solicitor for the casual revenue, that the custodiam shall be dissolved, which rule is also entered of course.

Fines impos-
ed on sheriffs,
how reduced.

So, where fines have been imposed on sheriffs for non-execution, or for mis-execution of any process directed to them from any of the courts above, and that the same have been estreated and issued in process, they may upon sufficient cause shewn, or by consent of the attornies who issued the writs, be reduced by the commissioners of reduction to whatever sums the said commissioners may think proper; and then, upon motion of the sheriff's attorney, an order is conceived that the clerk of the pipe do make out a *debet* of the sum to which the fines were reduced, for paying of the
same

same unto his Majesty's receipt, and on payment thereof that the said fines be absolutely discharged; and if such sheriff hath taken any bonds, bills, or any other securities for, or on account of, the said fines, he is to restore the same; or if he hath the body of the sheriff on whom they were imposed in custody for that cause only, he is on sight of the said order to enlarge him, and the present sheriff is to be thereof exonerated on his accounts.—But note, this application to the court of reducements is not necessary but in the cases of foreign fines, which (as has been said before) are fines for the same causes, imposed by the other two superior courts of record, and estreated into this; for the fines imposed in such cases by this court, where the writ has issued from it, may be discharged, on such consent as aforesaid, of the plaintiffs attorney, he being one of its own officers, on paying some small sum, as is before mentioned, into the poor box.

Whereas it appeared, on the apposal of the sheriffs of the counties of Leitrim, and Roscommon, that the green wax process, which issued out of the proper offices had not been delivered by the pursuivant to them, and the court being informed that by a standing rule * thereof, affidavits should be made of the delivery of the process to the respective sheriffs; it is therefore this day ordered, that the pursuivant attending this court do on the first day of every Michaelmas term file an

Rule, 28th
Feb. 1774.

* Mr. Howard, who searched the books for above an hundred years could not find such a rule.

† affidavit in the proper office, setting forth the respective times when, and to whom, the said green wax process were delivered by him or his messenger.

† It is impossible for the pursuivant to make this affidavit unless he delivers them himself, which is almost impossible; and that his messengers should make such affidavits, would be attended with no small expense; and if the pursuivant does his duty they are unnecessary.

N. B. This rule should have been in chap. 14, but was not known when that chapter was in the press.

C H A P. XXI.

OF THE FORFEITURES IN THIS KINGDOM BY THE
REBELLION IN 1641.

THERE were two considerable forfeitures in this kingdom, which, as they were attended with very peculiar circumstances, and as several acts of parliament were made relative to them, under which a great part of the landed property of this kingdom is derived, deserve a more particular enquiry.

Two considerable forfeitures in this kingdom.

Of those two forfeitures the first was occasioned by the rebellion which broke out in this kingdom on the 23d of October, 1641; the other by the rebellion in 1688, after the abdication of King James and the revolution in favour of William III. and Queen Mary.

At what times.

The former of these rebellions was begun and carried on, whilst the civil war was subsisting in England between King Charles I. and his subjects; and was afterwards quelled, and the kingdom restored to peace, during the usurpation of Oliver Cromwell, and before the restoration of King Charles II. by the contributions and assistance of several of his Majesty's subjects both in England and Ireland.

The rebellion in 1641.

And numbers of persons, who had estates in land and other properties, having been engaged and concerned in this rebellion, the forfeitures to the Crown were so considerable that the interposition of the English parliament was by it judged necessary; and accordingly by an act

Act of 17 Car. I. Eng. for the encouragement of adventurers,

B b 2

passed

passed there, 17 Car. I. it was amongst other things enacted, that all such rights, titles, interests, &c. as the said rebels, or any of them, on the said 23d of October, 1641, had, or afterwards should have, in any lands or other hereditaments, should be forfeited to his Majesty, and should be deemed, adjudged, vested, and taken to be in the actual and real possession of the said King, his heirs and successors, without any office or inquisition thereof to be found.

And reducing
the rebels.

And for reducing the rebels, and distributing their lands amongst such persons as should advance money and become adventurers in the reduction, two millions and a half of acres were to be assigned and allotted in this proportion, viz. each adventurer of £200 was to have 1000 acres in Ulster; of £300, 1000 acres in Conaught; of £450, 1000 acres in Munster; and of £600, 1000 acres in Leinster; according to English measure. And the bogs, woods, loughs, and barren mountains, were to be cast into these two millions and a half of acres, and so thrown into each man's division.

Quit rents.

And out of those acres there was to be a yearly quit-rent reserved to the Crown, viz. one penny in Ulster, three half-pence in Conaught, two pence farthing in Munster, and three-pence in Leinster.

Survey and
allotment di-
sected.

And by the said act a commission was to issue to survey all the lands of the rebels that should be forfeited, and to measure 625,000 acres in each province, casting in bogs, mountains, &c. as above. And these lands were to be divided amongst the adventurers by equal lot by the commissioners appointed under the great seal; and each allotment was to be returned into the high Court of Chancery.

Chancery. And every adventurer, by such allotment, was to be in actual seizin of his share.

And by the act every person within three months after allotment that should have 1000 acres in Leinster, 1500 in Munster, 2000 in Conaught, or 3000 in Ulster, was to have power to erect a manor, with a court baron and a court leet, with all other privileges belonging to a manor, and with deodands, fugitives goods, &c.

Adventurers of a certain quantity to have manors, &c.

In the year 1652, the kingdom being reduced and the rebellion ended, the English parliament published an ordinance, called, an ordinance for the settling of Ireland; in which, declaring that it was not their intention to extirpate the whole nation, almost all the papists of the kingdom who were worth 10l. were divided into four classes.

Ordinance, dividing most of the Irish into four classes.

First, all persons who before the 10th of November, 1642, had contrived, acted, or aided the rebellion, murders, or massacres, which began in October, 1641, and all jesuits, priests, &c. who had any way contrived, aided, or abetted, and all persons who since the 1st of October, 1641, had slain any person not bearing arms for the English, or who, not being then maintained in arms under the command and pay of the Irish against the English, had slain any person maintained in arms for the English, and all persons, who being in arms against the parliament of England, should not lay them down in twenty-eight days, and submit to their authority, were excepted from pardon of life or estate.

First class excepted from life and estate.

Secondly, all persons (not being comprehended in any of the former qualifications) who had born command in the

Second class to be banished, and forfeit two thirds.

the war of Ireland against the parliament of England, were to be banished during the pleasure of the parliament, and to forfeit two thirds of their estates; and their wives and children to be assigned lands to the value of the other third, where the parliament should appoint.

Third class to
forfeit a third.

Thirdly, all persons of the popish religion (not being comprehended in any of the former qualifications) who had resided in the kingdom, at any time from the 1st of October, 1641, to the 1st of March, 1650, and had not manifested their constant good affection to the interest of the commonwealth of England, were to forfeit one third of their estates, and to be assigned lands to the value of the other two thirds, where the parliament should appoint.

Fourth class
to forfeit a
fifth.

Fourthly, all other persons who resided in Ireland within the time aforesaid, and had not been in arms for the parliament, or manifested their good affections to its interest, having an opportunity to do so, were to forfeit one fifth of their estates.

Ordinance for
the satisfac-
tion of adven-
turers and
soldiers.

By an ordinance made in the year 1653, for the satisfaction of the adventurers and soldiers, the forfeited lands in the counties of Limerick, Tipperary, and Waterford; in the province of Munster; the King's and Queen's counties, East and Westmeath, in the province of Leinster; Down, Antrim, and Armagh, in the province of Ulster; together with the county of Louth if necessary, except the barony of Atherdee, were to be charged with the sums due to the adventurers and soldiers, according to the rates before-mentioned; and to be divided between them by baronies moiety by lot.

And

And for the satisfaction of the arrears of the forces there, who should be immediately disbanded, several other proportions of forfeited lands were set out; particularly, the forfeited lands beginning at the end of one statute mile round the town of Sligo, and so winging upon the coast, nor above four miles distant from the sea; which was called the mile-line.

Satisfaction
for the dis-
banded forces
in the mile-
line.

Pursuant to this ordinance, commissioners were appointed for putting it in execution, and for taking a survey of the forfeited lands, and for appointing a court for receiving and hearing claims.

Commission-
ers appointed.

And by the instructions given to the commissioners, the second and third classes of the Irish above-mentioned, who forfeited one third or two thirds of their estates, were to be transplanted into the province of Conaught and the county of Clare, for the proportions to be allotted to them, except the mile-line; which line was intended to cut off the communication of the Irish with the sea, as the Shannon was to cut them off from the rest of the kingdom.

Irish to be
transplanted
to Conaught
and Clare.

Pursuant to these ordinances and instructions, commissioners of delinquency sat at Athlone, to determine the qualifications of papists; and upon their decrees other commissioners who sat at Loughrea set out the transplantations.

Many of the papists did not take out their decrees, and the transplantation was not compleated at the restoration; although all the papists lands were seized and sequestered, and the surveys were in hand and actually taking; and
being

Transplanta-
tion not com-
pleated at the
restoration.

being thus seized and sequestered on account of the rebellion, the act of settlement afterwards vested them in the Crown.

Thus stood the settlement between the parliament of England and the rebels. But, for a clearer explanation of the acts of settlement and explanation, it is necessary to take a short view of the several transactions and treaties between the King and the rebels.

Cessation of arms between the King and rebels.

About the 15th of September, 1643, there was a cessation of arms agreed upon and declared between the King and the rebels; and the 30th of July, 1646, articles of peace were agreed upon between his Majesty and them, which were afterwards broke by the interposition of the Pope's nuncio.

Peace concluded between them.

Afterwards on the 17th of January, 1648, peace was again concluded between them, which the Earl of Antrim, O'Neill and others in Ulster, refused to submit to; several of those who had submitted to the King laid down their arms, and upon the general transplantation were allotted to their proportions, according to the act for the settlement of Ireland, in the province of Connaught and Clare. Others of them attended King Charles II. in his exile, after the peace, and waited his restoration for a restitution of their estates. There was also another set of men to be provided for; and these were the protestant officers who had always continued loyal, and had served in his Majesty's army, and under his authority, from the beginning of the war to 1649; whose arrears had never been paid, on account of their loyalty, when Cromwell assigned lands to satisfy the rest of the army. The King likewise thought himself
in

in some sort obliged to take care of the interests of those adventurers who had lent their money upon the credit of acts of parliament to which his father had assented; and likewise of the officers and soldiers who had lands set out for satisfaction of the arrears of their pay.

And, in order to satisfy all parties he, on the 30th of November, 1660, signed his declaration for the settlement of Ireland. In which he confirms, in the first place, to the adventurers all the lands possessed by them on the 7th of May, 1659, and allotted to them according to the act of 17 Car. I. as to English or plantation measure; and engaged to make good the deficiencies of such as made proof of them before a certain day.

King Charles
II'd's declara-
tion for the
settlement of
Ireland.
Provision
made for the
adventurers.

He next confirms the lands possessed by the soldiers and allotted them for their pay before the 7th of May, 1659; excepting church lands, and such estates as were either procured by bribery, forgery, or perjury; or set out by false admeasurement; or which belonged to any of the regicides and halberdiers; or to others who had since his restoration endeavoured to destroy the publick peace, or manifested an aversion to his restoration and government, or which had been decreed by the court of claims or Exchequer to any person.

And for the
soldiers.

The officers who had served before June 5th, 1649. (except such as had received lands for their pay due to them since that day) were to be satisfied for their respective arrears out of forfeited lands in several counties therein named.

And for the
forty nine
officers.

And for protestants whose estates had been given to adventurers.

Protestants, whose estates had been given to adventurers or soldiers (except such as had been in rebellion before the cessation, or had taken out decrees for lands in Conaught, or Clare, in recompense of their former estates, were to be forthwith restored, and the others reprised.

And for innocent papists.

Innocent papists, who had been dispossessed, altho' they had sued out decrees and were possessed of lands in Conaught or Clare, in lieu of their former estates, were notwithstanding to be restored to their former estates; and the adventurers or soldiers removed to make room for such papist were to be forthwith reprised. But there was an exception as to innocent papists dispossessed of estates in corporations, who were to be reprised in forfeited lands near such corporations.

And for rebels, who had submitted and adhered to the peace.

Rebels, who had submitted and constantly adhered to the peace, and remaining at home, had sued out decrees and obtained possession of lands in Conaught, were to be bound thereby, and not be relieved against their own act. But if they had served faithfully under his Majesty's ensigns abroad, and had not obtained decrees and lands in Conaught, they were to be restored to their former estates; but not until the adventurer or soldier who was to be removed had a reprise assigned to him, it being more inconvenient to the latter than to the former to wait for reprisals.

Quit rents reserved.

And every such adventurer and soldier so settled, and every person so restored or reprised, was thereby to pay to the King, his heirs and successors, a rent of three-pence for every acre in the province of Leinster, two-pence

pence farthing for every acre in Munster, three-half-pence for every acre in Conaught, and one penny for every acre in Ulster, according to the English measure.

By a commission under the great seal of this kingdom, bearing date 30th of April in the 13th year of his reign, his Majesty appointed Commissioners for putting into execution the several matters contained in his said declaration, and gave them instructions for that purpose, by which they were to cast up the whole debt and demand of the adventurers, as well those who were satisfied, as those who were in part or the whole deficient, as also all the forfeited lands assigned to or for the adventurers, according to the survey commonly called Doctor Petty's Down admeasurement; and they were to compare the said demands and lands together, and what the said lands fell short of satisfying the adventurers, according to the rates, measures, and proportions, of which all or any of the adventurers were possessed on the 7th of May 1659, they were to set apart so much of the forfeited lands in the counties of Lowth, Catherlough, Kildare, or some other convenient place, for their satisfaction.

Commissioners appointed for executing the declaration, and instructions given them. How to proceed as to the adventurers.

And in order to the more particular apportioning or dividing the said lands among the adventurers, they were to cause proclamation to be made in all places in Ireland, directing every adventurer, his assignee, or agent, who had received any satisfaction in land for his adventure, within 40 days after such proclamation, to deliver to the commissioners, in writing under his hand and seal, a certificate of the houses, lands, &c. possessed by him, together with the content of acres, both profitable and unprofitable, as the same were admeasured to him; and

Proclamation to be made for the adventurers to return certificates of their allotment.

if such adventure were for houses in any city, such adventurer was to deliver in not only the particulars set out to him, but also the value of them.

And the adventurers and soldiers to return the surveys of their lands.

And such of the said adventurers and soldiers as had taken surveys of their lands were at a certain day to bring in to the commissioners such surveys, or duplicates thereof, together with the field books; which the commissioners were carefully to compare with the surveys taken by order of the late pretended powers; and if any considerable difference should be found, they were to ascertain such adventurer's and soldier's possession, by such of the said surveys as should be most for the King's advantage; yet so, that if the soldier or adventurer should find himself aggrieved, they were to appoint sworn surveyors to re-survey the lands in question, &c. and if information should be made to the Lord Lieutenant, &c. that profitable lands were enjoyed for unprofitable, the same was to be inquired of by a jury; and the profitable so enjoyed was to be re-assumed for reprisals of others.

The commissioners to make up books, &c.

And the said commissioners were out of the said certificates and surveys to make up books of what was due to each adventurer, and to ascertain the possession of such to whom lands were assigned, therein expressing who was the former proprietor, the town-land or denomination, &c. the content, number of acres, the parish, barony, county, and province in which such lands lay; and where it appeared that any adventurer or his assignee had more lands than were sufficient to satisfy his debenture, and that such person was in any other place deficient, or had purchased the right of any deficient adventurer, such overplus was to be assigned unto him towards satisfaction of such deficiencies.

And

And in the restoring of innocents to their estates the commissioners were to observe the following directions, viz. not to restore any as an innocent papist, that, at or before the cessation which was made upon the fifteenth day of September, 1643, was of the rebels party; nor any, who being of full age and sound memory enjoyed their estates real and personal in the rebels quarters; (provided that, where any citizen or inhabitant of the city of Cork, or of the town of Youghal, or any other person, was not permitted to live in the English quarters, but was expelled from thence, and driven into the quarters of the rebels, then and in such case, such inhabiting in those quarters, and there receiving any benefit of their estates, should not be construed or adjudged any bar or impeachment of their innocence;) nor such as entered into the Roman catholick confederacy, at any time before the articles of peace concluded in 1648; nor such as at any time adhered to the nuncio's or clergy's party, or papal power, in opposition to the King's authority; nor such as had been excommunicated for adhering to the King's authority, and afterwards owned their offences for so doing, and were relaxed thereupon from their excommunication; nor such who derived their titles to their estates from any who died guilty of any the aforesaid crimes; nor such as pleaded the articles of peace for their estates; nor such as, being in the quarters which were under the authority of the late or present King, held correspondence with, or gave intelligence to, such as were then in opposition against the late or present King in Ireland; nor such as before any of the peaces in 1646, or 1648, sat in any of the confederate Roman catholick assemblies

The qualifications of innocent papists.

assemblies or councils, or acted upon any commissions or powers derived from them, or any of them; nor such as empowered agents or commissioners to treat with any foreign papal power beyond seas, for bringing into Ireland foreign forces, or were persons who acted in such negotiations; nor such persons as had been wood-kerns or tories before the marquiss of Clanrickard's leaving the government of that kingdom.

Adventurers
&c. removed
to be reprimed
forthwith.

And the said commissioners were to take care that adventurers and soldiers in the possession of the estates of any innocent protestant, or papist restored to his estate, should be reprimed in lands of equal value.

To prepare a
particular of
forfeitures in
the counties
of Wicklow,
&c.

The commissioners were to prepare a particular of all the forfeited lands in the counties of Wicklow, Longford, Leitrim and Donegal, and also of the forfeited lands, &c. not already disposed of, in Connaught and Clare, being within a mile of the Shannon, or of the Sea, commonly called the mile line, and within any corporation in Ireland; and they were to get the same valued, deducting the value of the improvements by building or repairing houses, on any leases or contracts for leases in any of the corporations aforesaid, the value of which improvements were to be ascertained.

How to pro-
ceed as to the
49 officers.

The commissioners were then to prepare an account of the personal arrears of such officers, as served in Ireland before the 5th of June, 1649, and had not received any lands or money in satisfaction of their arrears, before or since the said 5th of June, 1649, and the commissioners were to make an estimate of the respective securities appointed for the satisfaction of such officers; in order to
which,

which, they were to value the houses, lands, &c. at eight years purchase, deducting the value of the improvements, and if the said security should not extend to satisfy twelve shillings and six pence in every pound of the said arrear, they were to proportion the satisfaction according to the security; then the said security was to be sold by publick sale to the best bidder, not under eight years purchase, deductions being made for the improvements *. And by these instructions 18 pence in the pound of the value of the houses set out in the 49 security, were to be reserved to the crown.

And for the better quieting and settling the several persons intended to be provided for by the declaration and this act, the chief governor for the time being, upon certificates signed by the commissioners, or any five or more of them, expressing the names of the persons, the quality of their estates, the number of acres, the barony, county, and province in which such estates lay, and the rent reservable to the Crown, was authorized, at the request of the persons so concerned, to cause effectual letters patent under the great seal to be passed to them, without any further or other orders from the King.

Patents to be
passed upon
certificates
signed by the
commissioners
&c.

* Yet note, that this security was afterwards made up into lots, and past in certificates and patents to certain trustees, in trust for the several persons concerned in the lots, according to their respective debentures, their proportions being mentioned in the patent of every lot; and every person concerned had a right in equity to compel the said trustees or patentees to convey unto him his proportion of the lot, being estimated according to the proportion of his debt. But many of the inferior officers have been to this day without satisfaction, and the whole has been swallowed up by the trustees, who generally were the principal persons concerned.

The

Where the
commissioners
books were
to be deposit-
ed.

The commissioners, having fully executed their commissions, were to deliver up their books unto the Auditor general, and duplicates of the same to the Surveyor general, to remain there as of record.

Complaints
against the
King's decla-
ration.
Carte v. 2.
220.

The King's declaration for the settlement of Ireland, though intended to provide for all interests, did not satisfy all parties. The adventurers and Cromwellian soldiers had indeed all that they could ask granted them therein; but the officers who served before 1649, and whose loyalty only had hindered their being paid in the time of the usurpation, were treated with great inequality, with regard as well to the quantity of their debt (a provision being only made for the proportion of 12s. 6d. in the pound) as the security assigned to them, which was not likely to hold out to answer even that proportion. Whatever reason they had to complain, their duty and affection to the King made them declare themselves ready to be concluded by his Majesty's pleasure. But the Irish were more clamorous; and those who were entitled to the benefit of the articles of the peace in 1648 thought it very severe treatment, that their restitution should be postponed till reprizals were found out and assigned to the adventurers and soldiers who had got possession of their estates. They complained still more heavily against the instruction given to those commissioners, in which the qualifications for innocency were made so very strict.

Reason of
one severe
mark of de-
linquency.

One of those marks of delinquency, viz. enjoying their estates in the rebels quarters, was certainly rigorous; but the reason upon which it was grounded was, that the rebellion being almost twenty years before, and the Irish
having,

having, it was supposed murdered all the English, or driven them away, it was not possible to procure, at that distance of time, witnesses to prove particular acts of rebellion against most of those who were therein concerned.

The commissioners for executing the declaration sat at Dublin, and published proclamations, requiring all adventurers, &c. within forty days to bring in the particulars of their estates, and all persons to enter their claims before the first of May. But very little was done in these respects, for want of a law to warrant the proceedings of the commissioners; and the judges having declared their opinion, that the declaration, being only an act of state, was no warrantable rule to walk by in the disposing of mens estates, very few or none of the Irish entered their claims.

Proceedings
of the com-
missioners in-
effectual.
Carte v. 2.
221.

In order therefore to remove some objections to the King's declaration, and carry it into legal execution, the famous act of settlement, 14 and 15 Car. II. was made, of which it will be necessary to give an abstract of the general clauses, with some observations and points adjudged thereon.

Act of
settlement,

And by this act all manors, castles, houses, lands, &c. which at any time from and after the 23d day of October 1641, were seized or sequestered into the hands of, or to the use of King Charles I. or II. or otherwise disposed of, or set out to any person or persons, use or uses, for adventurers, arrears, reprizals, or otherwise, whereof King Charles I. or II. or any * adventurer, soldier, reprizable person

Lands and te-
nements, &c.
seized or se-
questered
from and after
23 Oct. 1641,
&c.

* These soldiers and adventurers were obliged to claim in order to divest the lands which by the vesting clause were in the King; which is plain from the two
VOL. I. D d clauses

son or others, respectively, had and received the rents and profits, by reason or upon account of the rebellion or war; or whereof the adventurers, officers and soldiers then or formerly of the English army in this kingdom, or † transplanted or transplantable persons, their heirs or assigns, or any other person whatsoever, upon account of the said rebellion or war, were in seisin or possession, on the 7th day of May 1659; on which were set apart or reserved, towards the satisfaction of any the said adventurers, soldiers, or other persons, in consideration of any money or provisions advanced or furnished, or for arrears of pay, or in compensation of any service or other account whatsoever, or reserved in order to a reprizal for such incumbrances as were or should be adjudged to any persons out of the said lands, or for any other purpose whatsoever; or whereof any *custodiam*, lease for years, or other grant whatsoever, had been made; or unto which the King's father, or himself were then anywise entitled, upon account of the said rebellion or war; or which were then wrongfully detained or concealed by any persons whatsoever; as also

clauses of making out certificates; for by these, the commissioners were empowered to make out their certificates according to every man's interest; and on such certificates the chief governors, &c. were to order letters patent; so that the soldier and adventurer being to begin a title from the King, was to make out his right before the commissioners, and the patent was to be granted not in the usual way, where it was *ex gratia* by letters from the King, and *fiat* to the chancellor; but this was to be *ex debito justitiæ*, and founded only on the certificate of the commissioners, without any order from the King. Gilb. rep. 242.

† Transplanters were several Irish proprietors of the popish religion, who, by the late usurping powers during the disorder of the times, were dispossessed of their estates, merely for being papists; and many of these, having afterwards sued out decrees, were put in possession of lands in the province of Conaught and county of Clare, in compensation of their former estates. Now, in the recital or preamble of the act of settlement, it is said, that tho', as these decrees were acts of their own, they might without any injustice be denied relief, yet they are restored subject to the provisos and conditions therein mentioned.

all

all chantries, and all manors, lands, rents, tithes, pensions and other hereditaments whatsoever to them belonging, which were in the seisin or possession of, and out of which any rent or duty was reserved, by any, who by the qualifications of the act should not be adjudged innocent persons; as also all lands and tenements belonging to any ecclesiastical persons in their politick capacity, and that had formerly by them been let in fee farm, the right whereof was in any persons who should be not adjudged innocent; as also all leases that had been made by any ecclesiastical persons of any lands or tenements belonging unto them in their politick capacity, or to any persons who should not be adjudged innocent, were adjudged and declared, as from the said 23d day of October 1641, forfeited to the King his heirs and successors; and were from that time vested and settled in the real and actual possession of him his heirs and successors; without any office or inquisition thereafter to be found*; notwithstanding the former proprietors or reputed proprietors of the said estates, or any of them, were not attainted for the said rebellion or war.

Declared forfeited from 23 Oct. 1641.

But it is declared that the act should not extend to the avoiding of any conveyance or disposition of forfeited lands, &c. made since the 23d day of October 1641, by any protestant adventurer, or soldier, or other person, of or from such persons whose estates, if they had not so dis-

Not to extend to conveyances by protestants, adventurers or soldiers, &c.

* The *non obstante* in the close of this section was by the Irish popish proprietors thought severe; but in answer to this it was said, that if there were no attainder of the Irish, it was in favour to them; that so they might not be corrupted in blood, but left capable to inherit or purchase afterwards; and that the complaint had been much more just if they had been attainted by act of parliament, without further process, as had been done in lesser rebellions. Rep. of sir Hen. Finch. Carte v. 2. app. 76.

posed of them, would have been confirmed to them by the rules in the act limited.

Nor to persons transplanted to the province of Conaught or county of Clare.

Nor to the avoiding of any contract for lands in Conaught or Clare, set out by decrees, made by protestants or others that purchased any lands from the persons transplanted thither; nor to entitle the King to the mean profits of any of the said forfeited lands, since the day aforesaid set out to any adventurers, soldiers, or persons transplanted into the said province or county; or let by the late usurpers for yearly rents, or granted by them, and confirmed by the King's declaration aforesaid, and by the act; other than such of the said rents then in arrear and unpaid, and other than forfeited lands concealed.

Nor to lands belonging to the college of Dublin, or to the church, or to any corporation, or to some particular persons therein named.

Nor to be construed to forfeit and vest in the King any honours, manors, lands, &c. on the 23d day of October 1641, belonging to the university of Dublin; or to any archbishop, bishop, dean, prebend, dean and chapter, or other ecclesiastical persons in their politick capacity; or any other college, hospital, church collegiate or parochial; or to the church wardens and parishioners of any parish church for the uses thereof; or to any guild, corporation or fraternity; or to any parson, rector or vicar of any parish church; or to some particular persons therein named.

Nor to innocent protestants.

Nor to vest in the King, or take away any estate, right, &c. from any * protestants, their heirs, executors, adminis-

* These innocent protestants and papists were likewise obliged to claim in pursuance of the act, because they were obliged to make out the qualification of innocence; but when they made that appear, they were not enforced to take out any new patents, because they were not to begin any new title from the King, but were remitted to their old title to such lands as they claimed; and the lands came out of the Crown, not by any patent, or new grant, but by the divesting clause in the act. Gilb. rep.

trators or assigns, who did not join with the said rebels before the 15th day of September 1643, whereof upon the said 23d day of October 1641, they were seized or possessed or entitled; (other than such estate as they were seized or possessed of, to the use of the said rebels) nor to any judgment or decree obtained by them in the late courts of claims, or in any of the four courts in Dublin; or for which any judgment or decree should be confirmed or made by the commissioners appointed by the King for the execution of his said declaration and instructions.

Nor to any estate, right, &c. of any innocent papist, or their innocent heirs, executors, administrators or assigns. Nor to innocent papists, &c.

All persons their executors, administrators, and assigns, to whom any lands belonging to such protestant or innocent papist had been assigned or distributed, to be first reprimed before any other. Persons to whom lands of innocent protestants or papists were assigned, first to be reprimed.

All the manors, lands, &c. so vested and settled in the King, (except before excepted or provided for as aforesaid) to remain to the King, his heirs and successors, to the intent to be settled, confirmed, restored, or disposed to such uses, and in such manner, as in and by the said declaration and instructions and by the act are declared and appointed; and the said declaration and instructions are thereby, with the additions and alterations thereby made, ratified and confirmed. To remain in the King to the uses declared by the declaration & instructions.

And the manors, lands, tenements and rents whereof any archbishop, bishop, dean, dean and chapter or any other ecclesiastical persons whatsoever, in their politick capacity, were actually seized, or possessed in the year 1641, Ecclesiastical persons restored.

1641; and through the fury of the times had been dispossessed, were to be forthwith restored, and delivered into their quiet and peaceable possession.

Saving rights
of others.

Saving the rights of all others (other than such persons who should not be adjudged innocent papists) by this act.

Leases for
years by bi-
shops, &c.
forfeited,
given to their
respective
sees.

And leases granted for any certain term of years unexpired, by any archbishop, &c. or any other ecclesiastical persons, of any lands to them belonging, and which were by the act forfeited or vested in the King, are for the remainder of the term unexpired of such leases, given and confirmed unto the respective sees or bodies politick to whom the reversions belonged; except they lay within the security of the 49 officers; and except all forfeited leases, that exceeded the term of 60 years, of any chantry lands or houses lying within the security of the said officers, and which were not surrendered nor sentenced to be surrendered to the church in or before the years 1640 or 1641; the remainder of such term unexpired being esteemed part of the security of the said officers.

Church lands
granted in fee
farm, and for-
feited, to be
allotted by
way of aug-
mentation to
several arch-
bishops, bi-
shops, &c.
to Trinity
college.

And out of the lands belonging to any archbishop, bishop, &c. or other ecclesiastical persons, which had been granted in fee farm, and were by the act forfeited and vested in the King, several yearly sums were to be allotted and set out for the better support and maintenance of several archbishops and bishops therein named, and their successors, for ever. And to the provost of Trinity college, near Dublin, (out of the forfeited lands in the archbishoprick of Dublin) and his successors for ever £300 per annum.

And

And all impropriations or appropriate tithes forfeited or vested in the King, his heirs and successors, by this act, or otherwise forfeited and escheated to him in right of the Crown (if there were no leases thereof in being unforfeited, or as soon as such leases should expire, or be otherwise determined) are thereby given to the church for ever, and settled upon the incumbents and their successors, having the actual cure of souls in those parishes where such impropriations were, and such impropriate tithes did arise; reserving such portion thereof to be settled upon the vicars and choir-men of each cathedral church for the increase of their maintenance, as the Lieutenant, &c. and council should think fit; they the said incumbents and their successors paying to the King, his heirs and successors, such rents and duties as were formerly paid for the same, with such increase of rents as by the said Lord Lieutenant and council should be adjudged reasonable; or from the expiration of the said unforfeited leases respectively *.

Impropriations or impropriate tithes forfeited to be settled on incumbents and their successors, where the same are or do arise.

* For the explanation of the several clauses relating to impropriations it is to be observed, that although the granting words are as full as the clauses about augmentations and the college, yet the several bishops of the dioceses where those impropriate tithes lay thought it advisable to pass patents for them in trust for their clergy; upon which, and not before, the several incumbents enjoyed the same as soon as the old leases from the Crown expired.

Several rectories being appropriate to religious houses, they so continued until the dissolution, and then they came by the King's grant into lay hands, or continued in the Crown, who made long leases of them to several persons. Now, such as were the inheritance of the subject, and were forfeited by this rebellion, the King gives absolutely by the act to him who had the vicarage, as an augmentation of his living: and such as were in lease to protestants, or unforfeiting persons, he grants likewise to the vicars, or those who had the cure; and soon after the expiration of the unforfeited leases, the Duke of Ormond had many of these leases; but as soon as they were expired they came to the clergy, their bishops having before passed patents for the use of their clergy.

Provided

Lord Lieutenant, &c. or the lords presidents of Munster and Conaught not to be prejudiced as to any impropriate rectories, &c.

Saving for port-corn.

Lord Lieutenant or other Chief, &c. to allot recompense to restorable persons for their rectories impropriate annexed to churches.

Adventurers, to pay one &c. year's profit of their land to the King.

Erasmus Smyth, Esq; the lands settled on him for any pious uses exempted from such payment.

Provided that nothing in the act should extend to the disposing or altering of any impropriate rectories or tithes, or rents, enjoyed by, or settled on the Lord Lieutenant, &c. or enjoyed by the lords presidents of Munster and Conaught in right of their places.

And that the Lord Chief Justice of the King's bench, and Lord Chief Baron of the Exchequer, and master of the rolls, or any other of the King's officers, should and might have and receive such ‡ port-corn of the several rectories which formerly had been paid and reserved.

The Lord Lieutenant, &c. to allot such persons (who by the rules of this act should be restored unto the said rectories impropriate, in case no such annexation should be made) such recompense out of the same impropriations as should be thought fit.

All adventurers, their heirs and assigns, and all other persons claiming to have any lands or tenements as original adventurers, or under adventurers, were to pay to the King one full year's value of the profits issuing out of the lands possessed and enjoyed as aforesaid, to be paid by two equal payments within the space of two years. And all foldiers, their heirs or assigns, or any claiming under them, were to pay an half year's value of the profits issuing out of the lands possessed and enjoyed by them, in satisfaction of arrears, to be paid at one entire payment.

Provided that all lands settled or conveyed before the first day of May, 1662, on Erasmus Smyth, Esq; for any pious or other charitable use, should be exempted from paying the year's rent herein before imposed §.

‡ For port-corn see chap 4.

§ This Erasmus Smyth was a considerable adventurer, and concerned in the adventures upon the doubling ordinance in 1643, by which all they who adventured money

And

And forfeited leases of any messuages or lands not exceeding 31 years or three lives, from the 20th day of October, 1641, the immediate reversion, &c. whereof belonged to any innocent protestant or papist, might be granted by the Lord Lieutenant, &c. unto such innocent reversioners, who by virtue thereof should hold and enjoy the said leases against the King, his heirs and successors, and all other persons.

Residue of forfeited leases for 31 years or three lives, where the immediate reversion was in an innocent protestant or papist, might be granted by the Lord Lieutenant to such reversioner.

Provided that no undisposed or unconfirmed lands in the province of Ulster, which had come, or should come to the King's hands, should be set out in satisfaction of deficient adventurers; but that the same should be wholly reserved and disposed of for reprisal according to the full value and worth; unless the forfeited lands in other provinces should not be found sufficient to satisfy these deficiencies.

Lands in Ulster to be reserved for reprisals.

money on pretence of carrying on the war in Ireland (though it really was for the use of the parliament in England against the King) were to have double satisfaction in lands in Ireland. Now tho' by this act these adventurers were only to have satisfaction for the sums they really paid, yet they had so much favour shown them, that they might apply the deficiencies of soldiers or adventurers to the overplus, and so continue their possession. This Erasmus Smyth, then being an old bachelor, made the then Duke of York believe that he should have the remainder of all his fortune in case he died without issue, and there being then little probability of his having issue, the Duke became agent for him, and got him all the favour possible in the act of settlement. But the pretence was, that several publick pious uses should be performed by the said Erasmus Smyth after he had passed patent of his estate, which was valued at four or five thousand a year. The Duke required him to settle the estate according to his promise, which with much ado he settled on the Duke in failure of issue of himself, and at the same time founded a school in Tipperary, another in Drogheda, and a third at Galway, all which were far short of the value of what he proposed to settle to pious uses; however he was connived at for the reasons before-mentioned; but he afterwards married and had several sons, and his descendants have ever since enjoyed the estate, so that the Duke of York was disappointed, and the intended pious uses not executed.

VOL. I.

E e

And

Lands granted
by the King,
&c. to stand
charged with
such rents as
the lands of
adventurers
and soldiers.

And it was enacted that all the lands in Ireland granted by the King under his great seal of England or Ireland, and any way ratified by the act, should stand charged with a year's rent, or a year and an half's rent, and such other like quit rents and annual payments wherewith any the lands of adventurers or soldiers stood charged, to be raised, levied, and paid as other the like rents and payments by the act are appointed to be paid.

Where
greater rent
was reserved
in the patent
than the quit
rent would
amount to
then such rent
to be paid,
and no other
quit rent.

Provided that where a greater rent was reserved upon any such grants and letters patent than the quit rents reserved by this act would amount to, then the rent reserved by the letters patent shall be duly paid, and no other quit rents; saving to the King, his heirs and successors, all right and title to any manors, lands, &c. which he or his father had on the 22d day of October, 1641, in right of his Crown of Ireland; and which were then, or at any time within ten years before, in charge in the Exchequer, (otherwise than by inquisition of lands in Conaught found and returned in the time of the Earl of Strafford's government) and which were not since disposed by the King, or his father, by letters patent under the great seal of England or Ireland; and other than such rights and titles as in and by a certain act of parliament passed in England, entitled, An act of free and general pardon, indemnity, and oblivion, were mentioned or intended to be barred or extinguished.

Estates of
papists, restor-
able, to be
charged with
an half year's,
if they took
no lands in

And the Lord Lieutenant, &c. and council were empowered to charge, for the use of the King, the estates of papists restorable by the act, not exceeding the proportions following, viz. all papists who took no lands in Conaught, one half year's value, and such as took
lands

lands in Conaught, one year's value of the estates unto which they were or should be restored; to be paid into the receipt of the Exchequer for the satisfying unreturned persons for want of reprisals; or for the purchasing of reprisals, adventures, arrears, incumbrances, or other allowed interests by this act, from such as should be willing to sell their rights; whereby the land designed for reprisals might the better hold out to answer the ends of the King's declaration.

Conaught, and with a year's value if they took lands there, to enlarge the fund for reprisals.

The act of settlement was far from giving satisfaction to all parties; it was much complained of by the Irish, and by none more justly than the 49 officers, whose merits did not admit of a dispute, and who were the only persons that could in strict justice demand the payment of their arrears. They were many of them ancient inhabitants of the kingdom, and of the most considerable and best interested persons therein; had lost great estates by the rebellion, and had distinguished themselves by their loyalty. Notwithstanding which several grants and provisos had been obtained from the King, and inserted in the act, which intrenched upon the security allotted for the payment of their arrears.

Act of settlement not satisfactory, Carte, v. 258.

A bill of explanation was prepared by the Lord Lieutenant and council, and sent over to England in September, 1663; the purport of which was to explain the King's meaning in some clauses in his declaration, to assign a better security to the 49 officers, to prevent the restitution of the Irish to lands and houses in corporations, (which was done for reasons of state, upon a representation from the commissioners of the multitudes so restored) to take away a sixth part of the soldiers and adventurers lands, and thereby to increase the stock of reprisals, and to make provision for

Bill of explanation sent from Ireland, and its purport, Carte, v. 296.

some eminent persons who were cut off from all manner of relief by the power of the court of claims being determined. There had been four thousand claims of innocency entered in that court, yet they had not time to hear six hundred of them at the day their commission ended. The claims of all innocents that had been transplanted into Conaught were, by the commissioners instructions, not to be heard till those of innocents who had no land were first adjudged; so that not one of them had been heard. There was in the bill something done for these, and for the people of all sorts, towards their security and settlement, beyond what was done by virtue of the former act. To increase the stock of reprisals, the want of which was the great obstruction of the settlement, there was a clause inserted for resuming into the King's hands all estates which had been obtained by bribery, forgery, perjury, subornation, false admeasurement, and other undue means, or were enjoyed by persons that had by any overt act opposed his majesty's restoration, or had since endeavoured the disturbance of the publick peace.

Objections
made to it.

But several objections being made on all sides to the bill, all parties grew weary of the unsettled condition in which they found themselves, and grew disposed to relax something of their several pretensions. To this disposition in different interests there were other considerations which seemed to render a general agreement practicable. Upon examination of the pretended acts and ordinances of the late times, and the several books of subscriptions, and the times when they were made, it was discovered that one entire moiety of the adventurers money was subscribed and paid after the *doubling ordinance*, and consequently half of the lands set out to them ought to be retrenched, they being to receive only simple satisfaction for such money as they

they really and *bona fide* advanced. And yet the adventurers who demanded reprisals were most of this sort.

There were likewise gross abuses discovered in the manner of setting out the adventurers satisfaction; for they had whole baronies set out to them in gross, and then they employed surveyors of their own to make their admeasurements; and those finished, they had never since brought in their surveys or field books into the Surveyor general's office, or to publick view. Thus they had admeasured what proportions they thought fit to mete out to themselves; and what lands they were pleased to call unprofitable they had returned as such, let them be ever so good and profitable. In the moiety of the ten counties, wherein the satisfaction of the adventurers was set out, there were 245,207 acres so returned. Several persons, in case the King would grant them fee farms of all those lands held as unprofitable in five of those counties, offered to give an higher rate for them, one with another, than was paid him in quit rents for the profitable; and it was probable that others would do the like in the other five counties. The lands held by the soldiers as unprofitable, and returned as such into the Surveyor's office, amounted to 665,670 acres, as appeared by a particular recital thereof in the certificates of the proper officers.

Abuses discovered in the manner of setting out the satisfaction of the adventurers.

Besides the deductions to be made on this account, if the lands both of the adventurers and soldiers were reduced, as they ought, to English measure, according to the acts, above 500,000 profitable acres would be saved to his Majesty for a fund of reprisals.

When

Proposals of
the Irish
Roman Ca-
tholicks,
Carte, v. 2,
302.

When the bill of explanation was taken into consideration in England, proposals were made by the agents for the several interests. The Roman Catholicks, besides a repeal of the English acts of 17 and 18 Car I. and all attainders since October, 1641, and the establishment of the Down admeasurements, and Earl of Strafford's survey, the confirmation of all the decrees of the court of claims, and satisfaction to possessors for improvements, proposed that all the lands belonging to the Roman Catholicks in 1641 should be vested in his Majesty, who thereout should assign 1,000,000 acres of profitable lands, plantation measure, to the adventurers and soldiers, in full satisfaction of all their pretences to lands for adventures or arrears; to the 49 officers their security, if it did not exceed their demand; to innocents adjudged by the court of claims, the lands decreed them; and the rest to be set out for satisfaction of publick debts, provisions, &c. before the cessation, and to provide for the nominees not already restored, in such proportions as his Majesty should think fit, till after the subdivision and distribution of the rest among the several interests; and then one moiety thereof to be applied for the benefit of such protestants, intended to be provided for in the settlement, as should by the alterations thereof be most prejudiced in their respective satisfactions, in such proportions as his Majesty should think fit; the other to be distributed to such of the Roman Catholicks as should be the greatest sufferers by the said alteration. These moieties were to be taken respectively out of the lands assigned to the Irish and English by the act of settlement; each party supplying what was to be distributed to the sufferers of their denomination. They proposed likewise to advance his Majesty's revenue by quit rents and fines

finer payable out of lands to the sum of £200,000 a year; to which all the other interests readily agreed.

The soldiers desired that the Earl of Strafford's survey, and Sir William Petty's, might be compared and adjusted, so as to form thence an authentick rule and standard, whereby to know the proprietors quantities, qualities, and values of the lands; and that all the lands whereof the Roman Catholicks were possessed in 1641 being vested in the King, two fifths might be restored to them, and the other three fifths distributed among the several English interests. The adventurers complaining that they had lost above 200,000 acres by the decrees of the court of claims, desired that the rest of their security might be continued to them. But these proposals being opposed by the Irish, all the English interests agreed in making another, viz. that all the decrees and settlements already made to the Irish should be confirmed to them, as fully as they were decreed, unless the Irish desired a review; and that 400,000 acres more should be set a part for nominees, but all the rest of the lands vested in the King to be continued and distributed among the several English interests. The Irish objected to the uncertainty of this proposal, as not mentioning where the 400,000 acres were to be set out, and as being very far short of giving satisfaction to many hundreds of innocents yet unheard, whose rights were saved by the act of settlement, as well as to the nominees; computing this deficiency at 170,000 acres, with regard to transplanted persons in Connaught, besides what would be requisite to satisfy other persons provided for in the former act, but yet unrestored. This gave occasion to various computations

Proposals of
soldiers the
and adventu-
rers, Carte.
v. 2. 303.

tions and disputes about the materials and stock for reprisals; and to lessen the uncertainty and difficulty of that matter, the adventurers and soldiers consented to be reprised in quantity of acres only, and not in value, worth, and purchase.

Final agreement of the parties, Carte, v. 2. 303.

The Roman Catholicks at last to end all disputes proposed, that if, for the satisfaction of their interests, the adventurers and soldiers would part with one third of the lands respectively enjoyed by them on May 7th 1659, in consideration of their adventures and service, they were ready to agree to it; this proposal was in fine accepted, and one third of all the King's grants (except those made to the Duke of York, and some others) being likewise retrenched, all matters of any consequence were thereby adjusted.

And bill of explanation agreeable thereto, Carte v. 2. 304.

Thus was the settlement at last effected by the common consent of all the several interests concerned; and in consequence thereof the English council, on May 18th 1665, ordered that the adventurers and soldiers should have two thirds of the lands whereof they stood possessed on May 7th 1659, that the Conaught purchasers should have two thirds of what was in their possession in September 1663, that what any person wanted of his two thirds should be supplied, and whatever he had more should be taken from him; that the adventurers and soldiers should make their election where the overplus should be retrenched; and the 49 men should be entirely established in their present possessions. And upon these resolutions the act of 17 and 18 Car. II. sess. 5. ch. 2. or act of explanation of the act of settlement, was drawn up and received the royal assent.

And

And by this act the lands, tenements, hereditaments, &c. vested in the King by the act of settlement, are declared to be vested in him freed and discharged from all estates tail, and from all conveyances made before the 23d of October 1641, by any tenant in tail, and from all titles and estates derived by, from, or under such conveyance, and from all remainders, reversions, rights, titles, interests, &c. to be disposed of and settled to the uses limited and declared by that and the present act.

Lands, &c.
vested in the
King by the
act of settle-
ment dischar-
ged from esta-
tes tail, &c.

And it is thereby declared that no person, who by the qualifications in the former act had not been adjudged innocent, should be thereafter adjudged innocent, so as to claim any lands, &c. but should be for ever barred and excluded from all claims, &c.

Persons not
already ad-
judged inno-
cent barred.

And it is enacted that the adventurers and soldiers who on the 7th of May 1659, were seized or possessed of any lands, &c. towards the satisfaction of adventures or arrears, and all deficient adventurers should hold, and enjoy, and be settled in so much of the forfeited lands vested in his Majesty, as should amount to two thirds of what they had, or ought to have had, on the 7th of May 1659, to be computed by Irish measure, according to the Down survey, where the Down survey had been taken, and where the Down survey had not been taken, by the Strafford survey, or by some other survey to be taken; wherein the unprofitable land should be cast in together with the profitable; which two thirds should be held

Adventurers,
and soldiers,
&c. to be
confirmed in
two thirds.

and enjoyed by them, in full satisfaction of any right or claim they might have by virtue of the former act.

Adventurers, soldiers, &c. to be reprimed two thirds, before dispossessed.

And no adventurer, soldier, forty nine officer, or protestant purchaser, in Conaught, or Clare, before the 1st of September 1663, in possession of lands restorable was to be removed until he should have as much other forfeited lands set out to him, as should amount to two thirds of the lands so to be restored.

Directions to be observed when the adventurer, soldier, &c. was in possession of more or less than his two thirds.

And in order that there might be as little change or alteration of possession as should be consistent with the end of the act, it was directed that where any adventurer or soldier should be found to have in his possession more lands undecreed away, than his two thirds should amount to, he might continue possession of so much as the commissioners should adjudge his two thirds to amount to, and the overplus to be cut off at his or their election. And the like rule to be observed in the retrenchment to be made from the protestant purchasers in Conaught, and Clare. And where any adventurer or soldier should be found to be possessed of less land than his or their two thirds should amount to, that then he might continue in possession of what he had, and the residue to be set out and made up of other forfeited land, to be allotted and set out as near as might be to the lands in his possession.

All deficient adventurers to be satisfied in the same barony or County.

And it was further directed that all deficient adventurers, who were to be satisfied for two thirds of such their deficiencies, and all the adventurers, soldiers, and protestant purchasers in Conaught, and Clare, to whom lands were to be set out for the making up their two thirds, should

should be satisfied in the same barony or county, or in the next nearest in value, if it could be conveniently done.

And the commissioners for execution of the act were thereby directed to cause books to be made, in which should be entered the portions allotted to each adventurer, and soldier, &c. for their two third parts; and to return a duplicate thereof into the court of Exchequer, there to remain of record.

Books to be made by the commissioners and returned into the Exchequer.

And upon a certificate under the hands and seals of the major part of the Commissioners, of the lands so allotted, with convenient descriptions and denominations thereof, and presented to the Lord Lieutenant, &c. he the Lord Lieutenant, &c. was thereby authorized and required, to cause letters patent to be passed of such lands, without any further letters or warrants from his Majesty.

Patents to be granted upon certificates of the commissioners.

And where the estate in any lands recovered by any Irish claimant, by any decree by this act confirmed, should not be greater than for the life of such claimant, the commissioners were to give the person against whom the decree should be made his election to take the reversion in fee of such lands, expectant upon the determination of such estate for life, in lieu of his full two thirds; or to have his full two thirds set out to him presently out of some other forfeited lands. And where the estate so recovered by an Irish claimant should be such a remainder, or reversion, as should leave to the person against whom the decree should be made an estate for the life of some other person only, the com-

Where estate for life only recovered by an Irish claimant, the person against whom the decree, &c. might take the reversion in fee or two thirds in other lands.

And where an estate for life only left in the person against whom decree, &c. might choose the same in satisfaction of one of the thirds.

missioners were to give the person against whom the decree should be made his election to continue the possession of the land during the life of such person, in satisfaction of one of his third parts, together with an allotment of another third part, or to have his full two thirds set out to him out of some other forfeited lands.

Such letters patent confirmed against the King discharged of all estates, &c. not therein saved.

And all letters patent granted by virtue thereof are thereby confirmed unto the several persons therein named, according to the estates therein granted, against the King, and all other persons claiming by, from, or under him, discharged of all forfeitures for non-payment of money, or not putting in of claims, &c. and of all estates tail, and all other estates of freehold or inheritance, and all reversions, remainders, titles and interests whatsoever, not decreed or already allowed, other than what were intended to be preserved by this act, and should be reserved in the said letters patent.

49 officers confirmed in lands not decreed away, &c.

And it is thereby further enacted, that the protestant officers serving before 1649, and not excluded by the former act, and who had received no lands or money for their pay due to them for their service, should hold and enjoy, and be continued and confirmed in all and singular the lands, &c. not already decreed away by the commissioners, and in the benefit arising from the redemption of mortgages, statutes and judgments, &c.

Protestant purchasers from transplanted persons to hold two thirds.

And it is thereby enacted, that protestant purchasers before 1st September 1663, from transplanted persons in Conaught and Clare, should hold and enjoy and be confirmed in two thirds thereof, to be allotted them by the commissioners, and to be entered in books and passed by letters patent, as in the case of adventurers and soldiers.

And

And it is further enacted, that neither adventurer, soldier, or officer, protestant purchaser in Connaught or Clare, transplanted person, or any other person, entitled to reprisal, should be enabled to demand further than 2 full third parts.

No persons to be reprised above two thirds.

And it is further enacted, that all lands by this or the former act vested in the King, or restored by virtue of any decrees, or by virtue of any clause in this or the former act, and not particularly, by express words, excepted from quit rents in the same clause, should be subject and liable to such quit rents, to be paid his Majesty, as in the former act is directed *; saving only that the lands in the province of Ulster, which by the former act were charged with one penny the acre quit rent, should be thenceforth charged with two pence the acre quit rent.

All lands vested in the King, or restored, subject to quit rent as in the former act.

Lands in Ulster to two pence the acre.

But a power is thereby given to the Lord Lieutenant and council, within the space of three years, to make such moderation or abatement of the quit rent as they should think fit, where the quit rent should be so near the value of the land as to discourage improvement, which order of council, enrolled in the Exchequer, is thereby made as effectual as if thereby enacted.

Power given to the council to abate quit rents.

And decrees made by the commissioners under the former act, whereby any protestants had been declared innocent, are thereby confirmed. And † decrees whereby

Decrees of innocency confirmed.

* On this clause chiefly it was determined in this court, in the case of the King v. Dardis, Hill. 1667, that the estates of innocent papists should be subject to quit rents.

† The decree of the commissioners could not reduce the estate of an innocent papist, so as to give him a less estate than what he had before, for the decree did not make a title to the innocent papist as it did to the adventurer or soldier. Gilb. rep. Kellet v. Mc.Carty Moore.

any

any papists had been declared innocent, and which should be taken out within a certain time, are thereby likewise confirmed, with some exceptions and restrictions; but the persons so declared innocent and restored are thereby debarred from suing for mean profits.

Decrees of
innocency
quoad hoc, not
to entitle
claimants to
any other
lands.

And whereas many persons had put in their claims before the former commissioners, as innocent persons, thereby demanding some small parcel of land only, or deriving a title to some small part from some Irish papist, and thereupon no opposition being made, the commissioners declared the claimant, or the person under whom the claimant derived, to be innocent *quoad hoc*; after which the claimants, &c. alleging themselves to be declared innocent, entered upon great estates in several counties, as divested out of the Crown by such judgment of innocence, whereas if the whole estates, to which the claimants pretended, had been then in question before the commissioners, the adventurers and soldiers therein concerned would have been summoned, and might have produced proof of their nocency; it is therefore enacted, that no such decree of innocency *quoad hoc* should give such person any title to enter upon or enjoy any other lands, than what were particularly mentioned in such decree.

Innocents left
to law, the
proceedings
against them.

And because several persons had been decreed innocent, but had nevertheless not been restored, but had been left to the course of * law for the recovery of their possessions, by trying their titles, it is thereby enacted, that the defend-

* This was where a papist was innocent, and pretended a title to land, and summoned the proprietor to appear before the commissioners, and the proprietor not only denied the innocence but likewise the title of the papist claiming the estate, there if his innocency was found, he was found innocent at large and left to the law to try his title to the estate.

ants in such claims should within three months make their election, whether they would relinquish the possession of the lands in controversy to the King, and resort to other forfeited lands for their two thirds, &c. or abide a trial at law; and if they should elect a trial, and the Irish claimant should fail to prosecute his title, or a verdict and judgment should pass against him, then the adventurer, soldier, &c. was to hold the land to him and his heirs; but if a verdict and judgment should pass for the claimant, or no such election should be made, then the adventurer, soldier, &c. was to be excluded from demanding his two thirds. But it is thereby directed that no other title should be given in evidence by such Irish claimant, but such as was alleged in the claim exhibited before the commissioners.

And the act further directs, that in case of doubts or defects arising or appearing therein, the commissioners might, within two years next after their first setting, acquaint the Lord Lieutenant and council therewith, and that such order of amendment or explanation as they should make in writing, within the said two years, and enrolled in Chancery, should be as effectual as if it had been part of the act.

Doubts arising to be explained by Lord Lieutenant and council.

And in consequence of the last mentioned clause in the foregoing act, and of certain doubts proposed to them by the commissioners, they did by an order of council, bearing date 9 April 1666 and enrolled in the court of Chancery, order and declare, first, that all estates, &c. which did on the 23d of October 1641, or at any time since, belong to any Irish papist, or which had been returned by the civil survey, or Down survey, as belonging to any Irish papist, and which at any time after the 23d of October 1641 were

Resolution of doubts by Lord Lieutenant and council.

Estates seized, sequestered, &c. to be taken and adjudged forfeited to and vested in his Majesty, without further proof.

seized,

seized, or sequestered, or vested in his Majesty, upon account of the rebellion (excepting such estates as had been decreed to innocents, and belonged to them on the 22d of October 1641, and excepting such lands as had been restored to the former proprietors by some clause in either of those acts, and excepting any lands for which some judgment or decree was had by a protestant in the late court, or pretended court of claims, or in any of the four courts, before the 22d day of August 1663) should at all times thereafter in the four courts sitting in Dublin, and in all courts of justice, and in all trials, actions and suits, both in law and equity, as well between his Majesty and any of his subjects, as between party and party, without any further proof, be always construed to have been seized, sequestered, and from the 23d of October 1641 forfeited to his Majesty, without any inquisition or office found, &c.

After adjudication of any lands, &c. and after certificate and patent passed, the rights of all persons, (except as herein are excepted) for ever concluded and barred.

And secondly, that after the commissioners for executing the said acts shall have adjudged any of the said lands, so vested or forfeited to his Majesty, to any person or persons who by the said acts are * entitled thereunto, and shall have granted their certificate accordingly, and letters patent shall be thereon passed, the rights, titles, and interests of all persons whatsoever who had not been adjudged innocent, as well such as were protestants as papists, should be thereby concluded and barred for ever; other than such rights and titles which should be reserved in the letters patent; and other than such rights as are the proper act of the party, to whom such letters patent shall be granted, or of those under whom he claims as heir, executor, or administrator; and other than such debts,

* By the persons entitled must be understood persons entitled by the act to receive certificates. Gilb. ante 216.

leases,

leases, and payments whereunto the same are by the said acts made liable; and that the said lands, &c. in the said letters patent contained, should be by the said acts confirmed, according to the several estates thereby granted, against the King and all other persons bodies politick and corporate.

And thirdly, that all adventurers and soldiers, their heirs and assigns, should have and enjoy an estate of inheritance in fee simple in such lands as should be certified to belong to them; unless some lesser estate should be therein expressly limited; and that in case such lesser estate should be so limited, the party should be reprimed out of other lands, so as to make up his two third parts, by the said acts intended to him, equal in worth and value to others who should have estates in fee simple certified and granted to them.

What estate the adventurers and soldiers shall have in the lands so adjudged, &c.

Upon the construction of these acts, a considerable question arose, whether the estates of innocent papists restored were liable to quit rents. When the settlement of Ireland was under consideration before King Char. II. previous to the passing the declaration, the Irish papists urged that they should only hold by their old tenures, and pay their old rents; but the agents on the other side (amongst whom was the earl of Orrery) insisted that as the rebellion was begun by the papists, whereby the King was so long deprived of his ancient revenue, the papists ought to contribute equally with the new interests for its future augmentation. After the declaration, and when the act of settlement was before the council, the papists again urged this point; but the commissioners from the lords justices answered that this matter had been settled by the declaration, and the former arguments were used in support of

Determinations relative to the question whether estates of innocent papists were liable to quit rents.

the charge, and the bill passed without alteration as to this point.

But when all the decrees of innocence were passed under the act of settlement, and the estates put in charge for the quit rents, it was made matter of doubt, whether under that act they were liable. And the point was brought under consideration of the court of Exchequer in Easter term, 1665, in the case of the King against Gerald Dardis, which was as follows:

He, being charged for some lands in the county of Westmeath, came in and pleaded his decree of innocence; the Attorney general replied, that he would not prosecute further, and did not deny the lands being put out of charge, with a saving for the arrears before the 15th day of June, 1663; the court accordingly gave judgment of exoneration: And the lands of innocent papists were taken out of charge, and so continued until after the act of explanation *. When that act passed they were again put in charge; and the point came again into question in Hillary term, 1667, in the case of the King against the same Gerald Dardis, as follows:

After praying oyer of the charge, Dardis pleaded, that before the charge, viz. 22d of October, 1641, he was seized of these lands in his demesne as of fee; that being so seized, 1st of May, 1652, the lands were seized and sequestered; he then pleaded the act of settlement, and the exception in favour of innocent papists; and his decree of innocency, and the former discharge, and the act of ex-

* Those rents amounted at this time to £10,000, as appears by a letter of the Duke of Ormond to King Charles II. Carte, 2 vol. app. p. 87.

planation,

planation, confirming the decrees of innocency. The Attorney general replied, admitting the several matters so pleaded, that the clause in the act of explanation by which all lands vested in the King by, or restored by virtue of, any decree, or by virtue of any clause in either act, and not particularly excepted from quit rents in the same clause, should be liable to quit rents, and averred, that the lands in question are not exempted by express words, and that the rent in question was a quit rent, according to the rule in the act of settlement. Dardis demurred; and the Attorney general joined in demurrer; and after many arguments, and great deliberation, the court gave judgment for the charge: for that the lands of innocent papists were vested in the King, and restored by virtue of decrees, and those decrees confirmed by the act of explanation, and consequently they fell within that clause in the act which charges quit rents; and there are not in either act any express words to exempt them, as there are with regard to innocent protestants.

And afterwards, Michaelmas term, 1670, upon motion made by John Temple, knight, setting forth, that in the roll transmitted by his Majesty's late commissioners for executing the acts of settlement and explanation, for the charging the estates of innocent papists, there were many lands left out of charge, and others unduly charged with more acres than were in the Down survey; and therefore desiring that such lands so omitted out of the roll, and included in the respective decrees of the said innocent papists, might be brought in charge, by his Majesty's Surveyor general, and that where any such mistakes should be in the roll of innocency the same might in like manner be certified. It was ordered that his Majesty's Auditor general should, upon certificate of the Surveyor general, bring in

Michaelmas term, 1670, ordered that the lands of innocent papists should be put in charge.

charge all such lands so decreed to any innocent papist, and so omitted out of the said roll in charge; and that he likewise, upon the like certificate from the Surveyor general, should ascertain where any mistake should be in the said roll, so that his Majesty's rents might be thereby ascertained; whereof the Auditor general, Surveyor general, and all other officers of the court were to take notice.

Innocent protestants deriving under innocent papists liable to quit rent.

And on the 13th of December, 1673, in the case of the King against Malone, the question being, whether an innocent protestant deriving under an innocent papist should be liable to quit rent, the court were of opinion that he was, and gave judgment for the King.

By the statutes of 10 Will. III. c. 7, 10 Will. III. c. 18, and 2 Ann, sess. 1. c. 9. there are several provisions made for quieting possessions under the acts of settlement and explanation, and barring ancient claims; but these acts, being now of little use, are not necessary to be inserted here.

C H A P. XXII.

OF THE FORFEITURES IN THIS KINGDOM BY THE
REBELLION IN 1688.

VERY shortly after their Majesties, King William and Queen Mary, had accepted the Crown of these realms, which was on the 13th of February, 1688, a rebellion broke out in this kingdom in favour of the late King James II. encouraged and assisted by the French King; which, after it had raged for near three years, was quelled, and the Irish reduced to obedience, at the expense of the people of England; for which reason, and as the forfeitures were very considerable, (many persons of this kingdom of large properties having been engaged in the rebellion) the parliament of England, notwithstanding the royal prerogative, and the right claimed by the Crown to the disposal of these forfeitures, took upon them to dispose of them as they thought fit; and even to re-assume almost all the grants which the Crown, in virtue of this prerogative and right, had made to several persons of several of these forfeitures.

The rebellion
in 1688.

Now the state of these forfeitures upon this rebellion, and the manner in which they were disposed of, were as follows, as appears by a report made by the commissioners of the revenue to the lords justices the 3d day of June, 1693.

The state of
the forfeit-
ures, and how
disposed of.

Soon

Commission
to the Earl of
Longford and
others.

Soon after the reduction of Ireland, their Majesties granted a commission to the Earl of Longford, and others, for seizing and securing all forfeited goods, chattels, and estates, dated the 12th of July, 1690.

And repre-
sentation
against it by
the commis-
sioners of the
revenue.

Upon which the commissioners of the revenue, by their letter of the 17th of July, 1690, to Sir Robert Southwell, represented to his Majesty that they were empowered by their commission, as well as by particular directions of the lords of the treasury, to take care of the forfeited estates and effects belonging to rebels in this kingdom; and that the management thereof by them, and their collectors, within their respective districts, would be much more effectual and less chargeable than by others.

His Majesty's
order thereon,
by which the
commissioners
of the seizures
were to seize
and to trans-
mit to the
commissioners
of the reve-
nue.

His Majesty by his order of the 23d of July, 1690, signified his pleasure, that the said commissioners of seizures should nevertheless continue to act by virtue of their commission, but that all seizures that were made by them should be transmitted to the commissioners of the revenue, to the end that such forfeited goods as were perishable might be disposed of; and that the houses and lands might be set for a year by the said commissioners of the revenue; the produce thereof to be paid to their Majesties receiver general.

And several
returns ac-
cordingly
transmitted
by them to
the commis-
sioners of the
revenue.

And pursuant to this order, and to a subsequent order of the lords justices, dated the 29th of September, 1690, the commissioners of seizures did transmit to the commissioners of the revenue the returns of lands and goods seized by their sub-commissioners, contained in several schedules or lists; which the commissioners of seizures certified to be true copies of the returns made to them by
their

their sub-commissioners. But this was not done till the months of October, November, December, 1689, and January, 1690, as appears by the dates of the several transmits signed by the commissioners of seizures.

These schedules being so transmitted, the commissioners of the revenue caused such of them as related to personal estates to be transcribed, and sent to the several collectors in whose districts such personal estates were, with instructions, which were approved of by the lords justices, to them to demand and receive the goods, stock, &c. therein mentioned from the sub-commissioners, (giving acquittances for the same) and also to dispose of them, when received, as therein directed.

Who sent such as related to personal estates to the several collectors.

The commissioners of seizures being superseded by warrant under the great seal, dated the 6th day of February, 1690, it was then thought necessary for their Majesties service, that the original returns of the sub-commissioners, then in the hands of the dissolved commissioners, should be lodged in the Chief remembrancer's office in the Exchequer, there to remain on record, as a check upon all such persons as had been concerned in the forfeitures; which was done accordingly.

The commissioners of seizures superseded, and the original returns of the seizures lodged in the Exchequer.

And pursuant to the before-mentioned instructions the several collectors demanded from the several sub-commissioners the goods, corn, stock, &c. wherewith they were charged in their said schedules, and made inventories of such part thereof as they received; which, with the accounts of their proceedings from time to time, they returned to the commissioners of the revenue.

The collectors got the goods, &c. from the sub-commissioners and returned inventories to the commissioners of the revenue.

But

Reasons returned by the sub-commissioners why but a small part of the goods could be received.

But though the returns made by the sub-commissioners were very large, and carried with them an appearance of considerable quantities of forfeited goods, &c. yet by the reasons entered in the margins of the said returns by the sub-commissioners themselves, it appeared that but a small part of them could be expected to be received by the collectors; these reasons setting forth that the goods specified were either claimed by persons under protection, or detained by protestant landlords for rent due to them from forfeited tenants, or were seized on and embezzled, or destroyed by the army.

The sub-commissioners not accounting fairly for the goods, &c. personal interrogatories exhibited to them.

The commissioners of the revenue finding by the returns of their collectors, and by other informations, that there nevertheless remained with several of the sub-commissioners considerable quantities of forfeited goods, stock, &c. which they ought to have delivered or accounted for, did in Michaelmas term, 1691, consult with their Majesties council, and soon afterwards with the Barons of the Exchequer, what method would be most proper to bring the sub-commissioners to a full and particular account; upon which it was resolved that personal interrogatories should be exhibited to them, and that upon perusal of their answers such further prosecution should be made as the court should think fit.

Interrogatories filed, and short answers thereto, whereupon informations advised.

Accordingly, interrogatories were on the 10th day of February, 1691, filed, and several of the sub-commissioners, and persons employed under them, examined thereon; but upon perusal of their answers the King's council found them short and evasive, and that there was reason to proceed against some of them in another method, which it was resolved should be by informations in the Exchequer;

Exchequer, and the prosecution was preparing and carrying on, when the late commissioners of the revenue were superseded in August 1692.

When the revenue was committed to the management of the commissioners, it was declared at the same time, that there would be very soon a parliament in Ireland; and the commissioners had scarce entered upon the rest of the business, and began to inquire into the nature and condition of these forfeitures, when (the elections being over) it appeared that several of the commissioners and sub-commissioners were chosen members of the house of Commons; and the commissioners believing it not fit for them to give any trouble to the members at the time of their sitting, they concluded it best to respite all proceedings of that kind till the rising of the parliament.

The reason.

And upon the prorogation of the parliament there issued immediately a new commission to inquire expressly into the personal forfeitures, which in that branch superseded that to the commissioners of the revenue, so that for these reasons they did not at all intermeddle in the said matter.

A new committee to inquire into personal forfeitures.

This is the sum of the proceedings between the commissioners and sub-commissioners of forfeitures, and the commissioners of the revenue, concerning these forfeitures.

Now the manner in which the collectors accounted for the same to the commissioners of the revenue was as follows.

The manner in which the collectors accounted to the commissioners of the revenue.

VOL. I.

H h

As

As to the
personal
estates.

As to all the goods, corn, stock, &c. which came to any of the collectors hands, they at several times returned up particular accounts thereof, in the charge part of which they made themselves debtors, according to the several inventories to the said accounts annexed, for all the goods, &c. which came to their hands, whether the same were received by them from the sub-commissioners, or seized by themselves, or received from the commissaries general of provisions by orders of the government; and in order to ascertain the said charge the better upon them, they were required to make affidavit that their said accounts contained all the goods, &c. that had respectively come to their hands.

Charge how
ascertained
on the col-
lectors.

How dis-
charged.

The discharge parts of the said accounts contained the manner how the said goods in particular were disposed of under the following heads, viz.

Goods delivered, by orders of the government, or by orders of the court of Exchequer, and the late commissioners, to persons that made out a right to the same; estimated at about £5000.

Bread, corn, hay, and oats, and other provisions, &c. delivered by order of the government to the commissaries general of provisions.

Bullocks, oxen, or horses, fit for carriage, or draught, delivered by like order to William Robinson, and Francis Cusse, Esquires, for the use of the train of artillery.

Goods,

Goods, &c. sold by publick cant, pursuant to the instructions before mentioned; as to which the collectors were required to make oath, that the same were sold for the particular rates charged in their accounts, for their Majesties best advantage, without any private benefit to themselves.

Goods remaining undisposed, being for the most part lumber, and goods of small value, which the collectors by order of the commissioners of the revenue delivered to the commissioners of inspection.

Several of these accounts passed upon oath in the Exchequer, as the respective collectors could be spared to come up to pass their general accounts.

The commissioners of the revenue also received from the commissioners of forfeitures several bonds, taken by them or their sub-commissioners, amounting to £18290, some whereof were from protestants in possession of lands by mortgage from the forfeiting proprietors, amounting to £5900. The condition of the bonds was to account to their Majesties for the overplus profits of such lands; but by the calamity of the times, the lands were not found worth the interest of the money; others were from protestants not forfeiting, or papists under protection, laying claim to goods which had been seized, amounting to £12390; the condition to answer the value of the goods therein mentioned, if their Majesties title should be made out in a short time limited; but this condition putting the proof upon the King made the bonds of little or no

Several bonds also delivered by the commissioners of the forfeitures to the commissioners of the revenue and how disposed of.

value; some few of these bonds were lodged in the Exchequer in order to prosecution, the rest were delivered to the commissioners of inspection as aforesaid.

The goods for which the bonds were taken also returned as a charge.

It is to be observed, that all the goods for which the said bonds were taken were likewise returned as a charge by the late commissioners of forfeitures in their schedules of forfeited goods, which swelled their accounts by two charges for the same thing, amounting each to the sum of £12390.

Proceedings of the commissioners of the revenue as to real estates.

Having thus given an account of the proceedings of the late commissioners of the revenue concerning the personal estates forfeited to their Majesties, it now remains to give an account also of the real estates.

Order to set the lands for one year.

The order before mentioned from the lords justices, of the 19th of September, 1690, which directed the commissioners of forfeitures, to deliver to the commissioners of the revenue lists or schedules of all the lands seized by them or their sub commissioners, did also direct the commissioners of the revenue to set the same for one year, for their Majesties best advantage, pursuant to certain methods proposed to the lords justices, and approved of by them.

Further order to set the lands for one year.

The lists or schedules of forfeited estates, which were first delivered to the said commissioners, appearing to them to be very faulty and deficient, in not returning lands of persons forfeiting, and in returning lands of persons not forfeiting, upon representation thereof to the lords justices, their lordships did by their order of the 7th of October, 1690, direct the commissioners of the revenue to

to set all such lands for one year as should appear to them by information, or otherwise, to be forfeited to their Majesties, not tying themselves up to the returns of the commissioners only.

But in some cases, where the said commissioners perceived a combination among the bidders for some of the said lands to be set, they sometimes adjourned setting the same till a further day, whereof they then ordered further publick notice, to procure more bidders for the lands; particularly in the case of some baronies of the Earl of Antrim's estate, and other lands.

Adjournment
of Setting,
where com-
bination was
suspected.

And sometimes they received special orders from their Majesties and the government, to set particular lands at a certain rent without canting, the yearly value of which at the time they were set, amounted to about the sum of £7428, tho' actually set but for £5571.

Some lands
set by special
orders of their
Majesties, not
by cant.

These orders were granted, either pursuant to a clause in his Majesty's declaration, for persons that would come under his protection, wherein it is declared that they should be allowed out of their forfeited estates a proportion for their maintenance according to their qualities, or else for some services done.

Pursuant to
his Majesty's
declaration or
for some ser-
vices done

But as well for the year 1691, as the year 1692, there were several parcels of lands posted by the commissioners to be set as aforesaid, for which no bidders appeared; of these lands the commissioners caused lists to be drawn out, and sent them to the respective collectors in whose districts they lay, to set them for one year for their best advantage, which the collectors did, as to
such

How the
commis-
sioners proceed-
ed where no
bidders ap-
peared.

such as they could get tenants for; but in several counties, the country being so full of rapparees, the improvements for the most part destroyed, and the lands waste, (particularly in the counties of Longford, Limerick, Tipperary, and in the most part of Conaught, &c.) no tenants for one year could be had for them: but for such of the said lands as were set by the collectors, or inhabited by any tenants, the collectors charged themselves with the produce thereof, in their accounts upon oath in the Exchequer.

The commissioners of the revenue increased the rents according to the corn and fallow.

The commissioners of the revenue, the first year they set the said lands, took care to increase the rents thereof, according to the number of acres forfeited, and the corn and fallow that appeared to them to be on each parcel of land, by the proposals of the persons bidding, or by other informations; and added a clause in the leases, that if there appeared any more corn or fallow than what was valued and included in the rent of each lease, the lessee should pay at the rate of 20s. per acre of corn, and 5s. per acre for fallow, for such overplus, and the collectors had directions to inquire and return in their accounts, where they found any such overplus; but the greatest part of the corn and fallow returned by the sub-commissioners of seizures, to be sown, or made on the forfeited lands, did appear not to be forfeited, but to belong to the under tenants, who sowed and made the same, and who were generally either protestants, or papists under protection, who could pay no more than the rent reserved on them, where they had leases from the forfeiting persons, or the custom of the country for the standing thereof, where they had none.

In

In the leases made by the commissioners, there was a clause that the rent therein reserved should be paid to their Majesties, clear, over and above all taxes, charges, &c. whatsoever; whereas other landlords did allow their tenants the militia money, and other extraordinary charges which at that time lay heavy upon the country.

And reserved the rents clear over and above all taxes.

And the commissioners did in several cases (when they could) oblige the tenants that took the said lands, the first year, to be accountable for the arrear due thereout before they took them; and where they could not, they gave it in their instructions to levy, from those that enjoyed the said lands before they were set, all such arrears, or so much thereof as could be got, which the collectors in their accounts on oath charged themselves with.

And obliged the tenants to be accountable for the arrears due before they took.

Lastly, several of the leases made of these lands by the commissioners having determined the first of November, 1692, and the commissioners having informed the then chief governor thereof, he ordered them to set the same for three years; but when they were going to proceed thereon, he countermanded the order, directing them to give notice to the said tenants, that they should respectively continue to hold the lands for the half year ending at May following, upon giving security for payment for the said time, after the rate they paid by their expired leases; to the end that all the leases that should thenceforth be made of the forfeited lands might commence from May day, 1693, which they did accordingly by publick notice.

New order for setting the lands.

But

But before the Commissioners of the revenue set them, a commission issued to inspect and inquire into the forfeited lands.

But before the time came for their making such leases, a new commission issued to commissioners, empowering them to inspect and inquire into the value and management of all the said forfeitures, and to set all the forfeited lands, with many other powers; as may appear by the enrolment of the said commission in the rolls office of this kingdom*.

Differences between the King and house of Commons concerning these forfeitures.

But great differences soon after arose between his Majesty and the English house of Commons, concerning these forfeitures; it having been resolved by them that a bill should be brought in, for attainting the persons who had been in rebellion in England and Ireland, and for confiscating their estates, and applying the same to bear the charges of the war, reserving to the King a power to dispose only of a third part of them; which was considered by the court party as a violation of the right of the Crown, for that his Majesty had an undoubted right, in virtue of the prerogative, to dispose of these forfeitures as he should think proper.

The King grants them away as he thought fit.

However, as this bill was likely to lie long before the lords, many petitions having been offered against it, the King, in order to bring the session to a speedy conclusion, had promised that the matter should be kept entire until the next session; which passing away without any proceeding in it, his Majesty thereupon granted away all these confiscations as he thought fit.

* There are three of these commissioners enrolled in the rolls office of the following dates to wit, 12 November, 4 Will. III. 29 March, 7 do. and 24 February, 8 do.

It was then immediately alleged that these forfeitures would yield a million and a half in value. Great objections were made to the merits of some who had the largest share in those grants. Attempts had been made in the Irish parliament to obtain a confirmation of them; but the earl of Athlone's only was confirmed; so that it became a popular subject of declamation to arraign both the grants and those who had them. Motions had been often made for a general reassumption of all grants made in this reign; to which it was answered by the court party, that since no such motion was made for the reassumption of those made in the reign of King Charles II, notwithstanding the extraordinary profusion of them, and the ill grounds upon which they were obtained, it showed both a disrespect and ingratitude, if, while no other grants were reassumed, this King's only should be called in question; and they proposed, that if the retrospect were carried back to the year 1660, they would consent to it, and urged that what would arise by such a retrospect would be worth while. But the infinite perplexity that would be occasioned by the unravelling, after such a length of time, the many sales, mortgages and settlements, which had been made pursuant to those grants, was an unanswerable objection to this proposal.

Debates in the house concerning these grants, and a reassumption thereof.

But at length a more effectual method was taken; for in the 10th and 11th years of his Majesty's reign an act of parliament passed in England, whereby a commission was given to seven persons named by the Commons, to inquire into the value of the forfeited estates so granted away, and into the considerations upon which these grants were made.

An act by which a commission is granted to seven persons to inquire into these forfeitures.

Zeal of the commissioners in exaggerating the value of the grants, and depreciating the merit of the grantees.

Report delivered to the house by four only.

Accordingly these commissioners, namely, the earl of Drogheda, Francis Annesly, John Trenchard, James Hamilton, Henry Langford, Sir Richard Levinge and Sir Francis Brewster proceeded in the execution of this commission, in which they showed that out of the sale of the confiscated estates £1,699,343 might be raised. They disagreed in some points, which caused the report to be delivered to the house by four only of the seven commissioners; the other three, namely, the earl of Drogheda, Sir Richard Levinge and Sir Francis Brewster, refusing to sign it, thinking it false and ill grounded in several particulars, of which they sent an account to both Houses; but no regard was paid to their memorial, nor any inquiry made into their objections; the specious proposal of raising such a large sum towards discharging the publick debts prevailed so with the house, that no complaints against the proceedings of the commissioners could find admittance, and all the methods used to disgrace the report had the contrary effect *.

The

* The report consisted of ninety articles, the chief of which are these.

The number of acres in the several counties belonging to forfeiting persons.	}	1,060,792
Which being worth £211,623 a year, at six years purchase for a life, and at 13 years for an inheritance, amounted to	}	£2,685,130
Out of these lands, the estates restored to the old proprietors by the articles of Limerick and Galway are valued at £724,923, and those restored by royal favour at £260,863, after which and several other allowances, the gross value of the estates forfeited since the 13th of February 1688 amount to	}	£1,699,343

The No. of grants and custodiams since the battle of the Boyne under the great seal of England are 76, some of the principal of which are mentioned, viz.

	Acres.
To the lord Romney 3 grants of	49,517
To the earl of Albermarle 2 grants of	108,633
	To

The Commons, having examined this report, came to an unanimous resolution, that a bill should be brought in to apply all the forfeited estates in Ireland, and the grants thereof since the 13th of February 1688, to the use of the publick;

Resolutions
of the house
of Commons
upon the re-
port and upon
the forfeitures
and grants.

To William Bentick (lord Woodstock)	135,820
To the earl of Athlone (occasioned by the parliament of Ireland)	26,480
To the earl of Galway	36,148
To the earl of Rochford two grants of	30,512
To the lord Conningsby	5,966
To colonel Gustavus Hamilton, for his services in wading through the Shannon, and storming Athlone, at the head of the English grenadiers	5,382
To sir Thomas Prendergast for the most valuable consideration of discovering the assassination plot	7,082

The report also observes, that several of the grantees had raised great sums of money by sale of their lands, amounting in all to £68,155; particularly the earl of Athlone (his grant being confirmed by act of parliament) has sold to the amount of £17,684, the lord Romney £30,147, and the earl of Albemarle £13,000.

In these and most other articles all the commissioners agreed; but a difference arose amongst them on account of King James's private estate, granted to him when duke of York. This estate three of the commissioners, and particularly Levinge, would not allow to be forfeited, and consequently ought not to be reported. Whilst the house had this matter under debate, Mr. Arthur Moore, a member thereof, sent the commissioners a letter of his own private motion, wherein he directed them to make a separate article of the Lady Orkney's grants, because that might reflect upon *some body*, meaning the King. Mr. Montague having learned the contents of Moore's letter, and being zealous to vindicate the King's honour, which he thought struck at in the letter, complained of it to the house. Mr. Moore, being pressed to tell his author, at first excused himself, alleging that he was under a private obligation not to reveal what had passed in private conversation, but the house insisting upon it, he named Lord Chancellor Methuen, who was also member of the house, who denied positively that he had mentioned any such thing. The house therefore resolved that the report was false and scandalous, and a motion being made that the four commissioners for Irish forfeitures, who signed the report, had acquitted themselves with understanding and integrity, a warm debate arose, and in the event it was resolved in their favour, and that sir Richard Levinge had been the author of the groundless and scandalous aspersions cast upon the four commissioners,

And presented
to the King in
form of an
address, and
the King's
answer there-
to.

publick; and ordered a clause to be inserted therein, for erecting a judicature for determining claims touching the same. They likewise resolved, that they would not receive any petition from any person whatsoever, touching the said grants or forfeited estates; and that they would take into consideration the great services performed by the commissioners, appointed to inquire into the forfeited estates of Ireland. They also resolved, "that the advising, "procuring, and passing these grants had occasioned great "debts upon the nation, and heavy taxes upon the people, "and highly reflected upon the King's honour; and that "the officers and instruments concerned in the same had "highly failed in the performance of their trust and "duty." And they voted, that the said resolution should be presented to the King in form of an address; which being done, the King answered, "that he was not only "led by inclination, but thought it justice, to reward "those who had served well, particularly in the reduction "of Ireland, out of the estates forfeited to him by the "rebellion there; that the long war occasioned great "taxes, and had left the nation in debt, and that the "taking just and effectual ways for lessening that debt, "and supporting the publick credit, was what, in his

and he was committed to the tower; however, the grant to the countess of Orkney was placed at the end of the report under these terms, viz. "a grant under the great seal of England, dated May 30th 1695, passed to Mrs. Elizabeth Villiers, now countess of Orkney, of all the private estates of the late King James (except a small part in grant to the lord Athlone) containing 95,649 acres, worth yearly £25,995 18s. value £337,943; out of which is payable £2000 a year to Lady Susanna Belasyse for her life, and £1000 a year to Mrs. Godfrey for her life; and almost all the old leases determine in May 1701, when the estates will answer the values above mentioned." This report was animadverted upon by many political tracts, and more especially in one entitled *jus Regium*, or the King's right to grant forfeitures, wherein the value of the Irish confiscations are reduced to £500,000 and the report of these commissioners much exposed.

" opinion

" opinion, would best contribute to the honour, interest,
" and safety of the kingdom."

This answer so provoked them, that they resolved,
" that whoever advised it had used his utmost endeavours
" to create a jealousy between the King and his people."
They then passed the bill of reassumption; and ordered
the report of the commissioners for Irish forfeitures to be
published; and that the resolutions of the 18th of January
and 4th of April 1690, relating to the forfeitures, the
King's speech of the 5th of January 1690, the address of
the house of the 4th of March 1692-3, and his Majesty's
answer thereunto, be also reprinted with the report.
And they resolved, that the procuring or passing exor-
bitant grants, by any member now or formerly of the
privy council, in this or any former reign, to his use or
benefit, was a high crime and misdemeanor.

Re-assump-
tion bill and
resolutions
passed by the
Commons.

In the reassumption bill little regard was shown to the
purchases made under the King's grants, and to the great
improvements made by the purchasers and tenants, which
were said to have doubled the value of those estates.

Noregard had
in the re-as-
sumption bill
to the im-
provements
made.

However, that some justice might be done both to pur-
chasers and creditors, thirteen trustees were named, in
whom all the forfeitures were vested, with authority to
hear and determine all just claims relating to those estates,
and to sell them to the best purchasers; and the money to
be raised to be appropriated to pay the arrears of the army.
They also resolved, " that no person should be a trustee
" who had any office of profit, or was accountable to the
" King, or was a member of parliament; and that the
" trustees be chosen by balloting; which being done,
" the choice fell upon Francis Annesly, James Hamilton,
" John

Trustees ap-
pointed of the
forfeited
estates and
their powers.

“ John Baggs, John Trenchard, James Isham, Henry Langford, James Hooper, Sir Cyril Wyche, John Cary, Sir Henry Sheers, Thomas Harrison, William Fellows, and Thomas Rawlins.”

The re-assumption bill consolidated with the money bill, and passed into a law.

The contests were very warm about passing the bill, and in the end it was consolidated with the money bill, which was to pass for payment of the fleet and army, and under the title of a bill, “ For granting an aid to the King by the sale of the forfeited and other estates in Ireland, and by a land tax in England.” It was then sent up to the lords, and after several conferences between them, and much difference, was passed into a law *.

Estates forfeited in the rebellion in 1688.

And by this act, viz. 11 and 12 Will. III. sess. 2. c. 2. Eng. all honours, manors, lands, tenements, rents, and reversions, in Ireland, whereof any persons who stood convicted or attainted of high treason or rebellion in Ireland, or of other treason committed in foreign parts, since 13th February, 1688, or should be convicted or attainted before the end of Trinity term, 1701, or who stood convicted or attainted by reason of being found by inquisition to have died or been slain in actual rebellion since the said 13th of February, 1688, were seized or possessed or interested in, or entitled to, or any in trust for them, on the said 13th day of February, or at any time after; or whereof

* Among all the hardships of this bill the case of the Earl of Athlone was most singular; the Commons had been so sensible of his good services in reducing Ireland, that they addressed the King to give him a recompense suitable thereto; the parliament of Ireland had confirmed a grant made to him of between 2 and 3000l. a year; and he had sold to those who thought they had purchased under an unquestionable title, yet no regard was had thereto, and the estate was thrown into the

the

the late King James II, or any in trust for him, was seized or interested in at his accession to the Crown of England, are vested and settled in the real possession and seizin of the trustees, and their heirs, executors, &c. according to the several * estates and interests which the said persons, &c. had therein on the said 13th of February, or at any time afterwards; to the end the same may be sold and disposed of for the uses mentioned in the act. And where any of the said persons were seized of an estate tail only in the said honours, manors, &c. the same are thereby enacted to be vested in the said trustees, and their heirs, in fee simple, to be sold and disposed of as aforesaid; with a saving for persons comprised within the articles of Limerick or Galway.

Or whereof King James II. was seized at his accession. vested in trustees.

To be sold for the uses in the act.

Estate tail vested in the trustees in fee.

And all grants, demises, surrenders, releases, custodiams, &c. or dispositions, since the said 13th of February, 1688, made or granted under the great seal of England and Ireland, or seal of the Exchequer in Ireland, or by act of parliament in Ireland, or otherwise, of any of the said forfeited or forfeitable estates or interests, or of the estate of the said late King James, or of any of the quit rents, crown rents, composition rents, or chiefries, belonging to the Crown of Ireland, are thereby declared null and void.

All grants, &c. of the said forfeited estates, &c. since the 13th of February, 1688, void.

* In the case of Ellis and Segrave, in the court of Chancery here, Mich. 1758, a question arose, as a principal point in the case, as to what estates were vested in the trustees by this act. Lord Bowes was of opinion that only the estate or interest, which the person convicted or attainted had in the lands, was vested in the trustees; and on this opinion granted an issue. But on appeal to the House of Lords of Great-Britain, they were of opinion that the lands of such persons are vested generally; and that all persons, having reversions, remainders, or incumbrances, were to claim them within the time prescribed, or to be without remedy; and that the judgment of the trustees was to be conclusive.

And

Rewards to
be given to
discoverers of
forfeited
estates con-
cealed.

And a power was given the trustees to reward discoverers of any such forfeited estates concealed, by giving them such proportion of the value, after sale thereof, as they should think fit.

Claims to be
made of
estates,
charges, &c.
on the lands
vested.

And all persons whatsoever, bodies politick and corporate, having any estate, right, title, interest, &c. charge or incumbrance whatsoever, in or to the lands, tenements, &c. vested in the trustees, before the 13th of February, 1688, by reason of any settlement, judgment, &c. affecting the said estates, were thereby directed, on or before the 10th of August, 1700, (which time was by 12 and 13 Will. III. c. 10. Eng. enlarged to the 25th of March, 1702,) to enter their claims and demands thereto before the trustees; or in default thereof, every estate, right, title, interest, &c. in or to the said premises, was to be void, and the estates so liable thereto discharged of and from the same. And the trustees were to hear and determine such claims before the 25th of March, 1701.

The trustees
to be a court
of record.

The trustees to be a court of record, and their judgments or decrees to be entered of record in books of parchment to be provided for that purpose, and to be final, notwithstanding any disability in the claimants. And all infants, feme coverts, idiots, persons of insane memory, or beyond the seas, corporations, and all other persons, bodies natural and politick, their heirs and successors, and their interests were to be concluded by such judgment *.

And

* It was determined in the King's bench here, in the case of Dixon and Annesley, and the judgment affirmed, upon a writ of error in the King's bench in England, Hill, 5 Ann. that the trustees had no power to determine what lands were vested in them;

And that the trustees, upon allowing such claims, for the better security of such claimant, his heirs, executors, &c. should give certificates under their hands and seals, containing the substance of such claim, and the allowance thereof; (which certificate, or a copy of the entry of the decree or judgment in their books, was made evidence, in all courts, of the allowance of such claim) and that such estate, right, title, interest, &c. or incumbrance, so allowed, should never after be called in question by the King, his heirs or successors, or by the trustees, or any claiming under them, or any of them; subject, nevertheless, to the power herein after given to the said trustees concerning the same.

Claims may be certified, and a copy good evidence.

And, after the expiration of the time for making such claims, the trustees were thereby directed, before the 25th of March, 1702, to sell the estates and interests vested in them, and not claimed, and the estates and interests claimed, as soon as the claims should be determined; such sale to be made to any persons, bodies politick or corpo-

The lands, &c. to be sold by the trustees by publick sale.

them; for that no lands were intended to be vested in them but such lands as belonged to forfeiting persons, or to King James II. which was a matter they could not determine; and that their power to inquire which were those lands was only in the nature of an inquisition: and that therefore if an innocent person claimed an estate of inheritance before the trustees, and his claim were disallowed, he was not precluded from trying his title at law; for that their determination as to that matter was *coram non judice*. But it seemed to be admitted that their determinations as to claims of particular estates, charges, or incumbrances, were final and conclusive. Holt's rep. 372, 394.

But by 6 Ann. c. 34. Eng. all persons claiming right or title to any of those estates, or any incumbrances thereon, as not being vested in the trustees, or on any other pretence, were limited to prosecute their claims in two years from the 24th of June, 1708, in any court of record, or otherwise to be barred.

rate, by cant or auction. And the power to the trustees to sell was afterwards, by 1 Ann, c. 13. Eng. enlarged to the 24th of June, 1703.

Such as remained unsold the 24th June, 1703, vested in the Crown under the management of the commissioners of the revenue.

And by 1 and 2 Ann, stat. 2. c. 21. Eng. all estates vested in the trustees to be sold, and which were not sold before the 24th of June, 1703, or otherwise disposed of, pursuant to the former act, were vested in the Crown for the uses intended by the act aforesaid, subject to such orders as should be given by the parliament of England in that behalf; and from that day all powers given to the trustees were to cease, and the trustees were to deliver up to the commissioners of the revenue, by indenture to be enrolled in the Exchequer here, all deeds, records, and papers, in their custody, touching the premises: and after that day the said commissioners were to levy and collect all the rents and profits of the said forfeited estates, and pay the money arising thereby, after all charges, into the Exchequer, there to be kept apart from all other the King's treasure, to be applied for the uses aforesaid, according to the orders of the parliament of England.

But the commissioners cannot make leases of them.

But it is held that the commissioners of the revenue cannot make any effectual lease of any part of those forfeited estates which remain undisposed of, they having only a power to levy and collect the rents, &c. and that such lease must be made by letters patent under the great seal.

Whether they can give a reward to discoverers.

Although the encouragement given to the discoverers of concealed forfeited estates, by the power given to the trustees of allowing to the discoverers a fourth part of the value

C H A P. XXIII.

OF INFORMATIONS IN THE EXCHEQUER.

Informations
in this court
what.

AN information on behalf of the Crown, filed in this court, is a method of suit for the recovery of money or other chattels; or for obtaining satisfaction in damages for any personal wrong committed in the lands or other possessions of the Crown. And it is grounded merely on the intimation of the Attorney general, who gives the court to understand and be informed of the matter in question.

The different
kinds.

The most usual informations are those of *intrusion*, *debt*, and *devenerunt*; which latter is the Crown's action of trover. But there is also a particular kind of information, styled *in rem*, when any goods are supposed to become the property of the Crown, and no man appears to claim them, or dispute the title of the King.

The process
to issue
thereon.

Upon the above general kinds of information the Attorney general may have an attachment for the first process if he requires it; upon which the defendant is to put in bail if it be required. But the most ordinary course is

by

by *subpœna*, and process of contempt; and if it be against a lord spiritual or temporal, or a corporation, process of *distringas* is to go.

If the King be seized of lands or tenements he cannot be disseized or ejected, but if any one enters he will be an intruder upon the King's possession; and therefore if a man enters upon the King's demesnes, and takes the profits, it will be intrusion; so if he enters upon a possession cast upon the King by descent, escheat, &c. before entry by the King; or if a man enters upon a farmer, or committee of the King; or if the King's tenant hold over his term; or if a man ousts the King's lessee for years; all those are intrusions on the King, for which an information will lie. *Stamf. præ. 56. b. Co. Litt. 277. a. Sav. 7. 69.*

Information
of intrusion
where it lies.

An information of intrusion likewise is the proper remedy for the recovery of estates forfeited to the Crown, upon attainders of high treason, or which the Crown is entitled to by escheat. But tho' by 33 Hen. VIII. c. 20. all lands, &c. forfeited to the Crown by an attainder of high treason are *ipso facto* vested in the Crown, without any office or inquisition found, yet in such case it is necessary, for ascertaining the certainty of the lands, to have them found by office, by which they may be put in charge; which is called an office of instruction.

For recovery
of lands for-
feited or es-
cheated.

The King by his prerogative may enforce the defendant in informations of intrusion to plead his title specially; and the ancient course of the Exchequer has been, that if in such informations the defendant plead "not guilty," he shall lose the possession. And it is said that the reason of this course is, for that regularly the
King's

The defend-
ant must
plead his title
specially.

King's title appears of record, and therefore the defendant may take knowledge thereof; and the rather for that in every information of intrusion it is specified of whose possession the lands, &c. were; but if the defendant pleads "not guilty," the King's counsel cannot know the defendant's title to provide to answer the same, as the defendant may do the King's title. 4 inst. 116. Dyer 238. Hard. 451.

But not where the King, &c. has been out of possession for twenty years.

But now by 15 Car. I. c. 1. where the King, or those under whom he claims, or others claiming under the same title, hath or have been or shall be out of possession by the space of twenty years, and hath or have not taken the profits of any lands, &c. within that space, before any information of intrusion brought to recover the same, in every such case the defendant may plead the general issue, and retain the possession until the title be tried, and found or adjudged for the King.

And no *scire facias* shall be brought in such case.

And by that statute, where such an information may aptly be brought on the King's behalf, no *scire facias* shall be brought, whereunto the subject shall be forced to a special pleading, and be deprived of the benefit of the act.

Plea must conclude with a traverse of the intrusion.

The plea of a special title in the defendant must conclude with a traverse of the intrusion laid in the information. Plowd. 548.

Replication.

If the plea alleges several facts, the King by his prerogative may in his replication traverse them all, tho' a common person ought to traverse but one. Sav. 19, 64.

If

If the plea alleges a title which avoids the possession in the King, supposed by the information, the King need not maintain the information, but may traverse the title alleged by the plea. Sav. 61, 64. Cr. Ja. 481.

But it is sufficient if the King by his replication traverses so much of the title as encounters the information, without answering to the whole title alleged by the defendant. As if to an information of intrusion in the moiety of a manor, the defendant says, A. was seized of the whole, and died seized of the whole, by which there was a descent to the defendant, it is sufficient to traverse that he died seized of such a moiety. Sav. 61.

The judgment, in an information of intrusion, for the King is, "that the defendant be convicted of the intrusion, &c. and be removed from the possession, and be attached to make a fine; and sometimes that the lands, &c. be taken into the King's hands, and the defendant attached &c." and upon such judgment, every party to the information or claiming under him shall be removed from the possession; but a stranger to the information shall not be debarred from his entry by such judgment; for it does not include any judgment that the king recover the seizure. 1 Co. 40. a. 22. a. Plowd. 561. a. Sav. 35 a. Hard. 460. Judgment.

It is said in Sav. 49, that upon an information for intrusion and cutting trees, or taking other valuable things, there is judgment for damages; but the reporter adds a quære.

The King may also, at his election, proceed by information by English bill in equity for the recovery of lands to which he is entitled; and in this case the bill is also to be in Information by English bill.

in the name of the Attorney general, and the proceedings are to be the same as in other English bills in this court. And it is often thought more advisable to pursue such method, as well for discovery of evidence, as to avoid the partiality of juries.

Informations
in debt.

The King may also proceed against his debtor by way of information of debt, in the name of his Attorney general, or if his debtor die, the like remedy may be pursued against his executors, or heir and terre-tenants. Comyn. 437. Hard. 440.

On penal
statutes.
3 Blacks.c.17.

This information is likewise brought for any forfeiture to the Crown, upon the breach of a penal statute. And the information by the Attorney general is most commonly used to recover forfeitures occasioned by transgressing those laws, which are enacted for the establishment and support of the revenue; others, which regard mere matters of police and publick convenience, being usually left to be enforced by common informers in *qui tam* informations, or actions, which may be sued for in other courts as well as the Exchequer. But after the Attorney general has informed upon the breach of a penal law, no other information can be received. Hardr. 201.

A penalty not
appropriated
must be sued
in Exch.

If a penalty is inflicted by statute on any offence, and there be no appropriation of it, nor any method prescribed by which it shall be recovered, the penalty is to be considered as a debt to the Crown, suable for in the Exchequer; and no indictment will lie for the offence. Stra. 828.

Where a pe-
nalty vested in
the Crown no
information
in B. R.

And where a penalty is vested in the Crown only, the court of King's bench will not grant an information; but it must be filed by the Attorney general. Stra. 1234.

All

On an information in debt for non-payment of duties, evidence may be given of an importation on a different day from that laid in the information; but, upon an application to the court by the defendant, they will make an order for confining the evidence to a certain time. Bunb. 223.

Information for non-payment of duties, evidence may be given of a different day.

So on an information in debt for the duties of goods imported on a day certain, evidence may be given of several importations at several times. Bunb. 262. But in this case the plaintiff had given the defendant a note of the times of the importations.

Or of several days.

In an information for not making a true report, contrary to the statute, the importation was laid to be within the port of London; upon evidence it appeared that the importation was at Cowes in the county of Southampton. It was objected for the defendant that, though the information might be brought in Middlesex, yet they ought to have alleged the importation to have been according to the fact, viz. at Cowes. And of this opinion was the Chief Baron. Bunb. 261.

Information for making a false report, must be laid where the importation was.

An information upon a statute must set forth every thing requisite to bring the offence within the act; and the words "contrary to the form of the statute" will not help it; for that is only a conclusion from the premises. Bunb. 129, 177. Hard. 217.

Information on a statute must bring the offence within the statute.

All informations, as well those brought by the Attorney general, as those brought by common informers, are to be filed in the pleas office in the Chief remembrancer's office; but where a penalty is sued for in this court by way of

Information where to be filed.

action, and not by way of information, it is to be filed in the pleas office in the law side of the court, where actions are brought between party and party.

The rules to plead.

And upon those informations in the Chief remembrancer's office, the secondary is to enter three rules to plead in four days; and when the three rules are expired, judgment is entered by default on a certificate of no plea.

Offences against the act of customs determinable by the Exchequer.

By stat. 14 and 15 Car. II. c. 9. commonly called the act of customs, all offences against that act are thereby directed to be heard and determined by the barons of the Exchequer. And one moiety of all fines, penalties, or forfeitures, is thereby given to the King, and the other to him that shall seize or sue for the same in the said court. And all prosecutions under the act must be within 12 months after the offence committed.

Those against the act of excise by the commissioners, &c.

But by 14 and 15 Car. II. c. 8. commonly called the excise act, all offences against that act are to be tried before the commissioners of excise, or their sub-commissioners. And as many breaches of the customs are likewise offences against the act of excise, few informations for penalties under the act of customs have of late years been brought on the act of customs.

Offences only determinable in Exchequer.

The following offences however of the act of customs, are not included in the act of excise, and can therefore be only prosecuted in this court, viz.

Receiving goods on board before declaration, or failing before out-
dice.

No master, &c. shall receive on board any goods to be exported, before he shall have declared to the customer, &c. his intention to lade, and the port he is bound to;

nor

nor shall sail before he shall have outvoiced upon oath; under the penalty of £100.

No master, &c. shall break bulk until he shall invoice upon oath, and enter into bond that he shall not sail without being cleared and discharged by the collector, &c. under the penalty of £100.

Breaking bulk before invoicing and give bond, &c.

If any person shall refuse to permit the collector, &c. to secure or take out of any vessel any fine goods of small bulk, to be put into the warehouses of the custom-house, till the duty be paid; or to unlade and secure all goods which shall not be unladed or discharged within twenty eight days after the arrival of the vessel, he shall forfeit £100.

Refusing to permit fine goods, or goods not unladed within 28 days to be brought on shore.

If after the clearing of any ship or discharging the officers from on board, there shall be found on board any goods which have been concealed from the officers, and for which the custom has not been paid, the master shall forfeit £100.

Having concealed goods aboard after clearance.

C H A P. XXIV.

OF INFORMATIONS IN THIS COURT ON GOODS
SEIZED, OTHERWISE STYLED IN REM.

Seizure of de-
relict goods
for the
Crown.
Gilb. treat.
Exc. 180, &c.

AND first it is to be observed, that this proceeding of seizing goods and merchandizes for the non-payment of customs, and the like, is termed in the law a prosecution *in rem*. For the better understanding of which, we are to consider that, where there was no property in lands or goods, they belonged to the Crown; and hence, if a man died without heir, and there was no tenure of his lands from any particular lord, the escheator seized them for the Crown. So all wrecks, waifs, and estrays were seized by the sheriff for the Crown; and in those cases, on such seizures, they used to make proclamation; and if, upon the second proclamation, no body came in to claim the lands or goods, they were presumed to be derelict.

So that upon every seizure they were wont to file informations in the courts of record, and then to make the first proclamation, in order to condemn such lands or goods to the King's use. And then there issued a commission of appraisement, in order that the same might be valued, and that the sheriff might answer the value thereof

thereof to the King's use; and upon the return of the commission of appraisement there was a second proclamation made; and then, if no body put in his claim, they were presumed to be derelict, and forfeited to the Crown. But in the case of estrays there was an abuse, by the sheriff's taking up horses and sheep, and getting them appraised and proclaimed, and forfeited to the Crown as derelict; and therefore a year and day was given to the owner to claim before such presumption took place.

When they constructed penal laws by way of forfeitures, the forfeiture was appointed *in rem*, and likewise a penalty was laid upon the person transgressing the law; and hence it was that, upon seizures, such goods were often derelict, because the owners would not come in to claim them, lest they should be subject to a personal information; and therefore the two informations were entered; and upon the first proclamation a writ of appraisement went out, that the officer or person that seized might be answerable for the King's part, as the claim was always entered upon the second proclamation.

Forfeitures
under penal
laws deduced
therefrom.

But the proceedings in the court of Exchequer on goods seized, &c. at this day, are thus;

Proceedings
in the Exche-
quer on goods
seized, &c.

When the commissioners of his Majesty's revenue have directed the prosecution, the solicitor of the revenue is to file an information in the office of pleas in the chief remembrancer's office, in the name of some fictitious person; but in these cases, no process whatsoever is to issue, either before or after the information is filed, as the seizure is deemed to be sufficient notice to the proprietor and every person concerned.

By informa-
tion.

And

Rules to
plead.

And upon these informations the secondary is to enter rules to plead, as upon informations *qui tam*, &c. upon penal statutes; and the proceedings to judgment, are the same, for want of a plea.

Proclama-
tions.

And when the information is so filed, the solicitor of the revenue may cause the usual proclamations to be made, which are thus, viz.

“If any persons will claim property to, or show cause why the ship or vessel called ——— with her furniture, &c. lately seized at &c. being imported contrary to the statute, should not be forfeited, let them come forth, and they shall be heard.”

And on the second or third day afterwards, inclusive, the like proclamation is to be made; and in the same time afterwards a third; and these proclamations are made in the Exchequer, sitting the court, and entered in the rule book; and the first of them is generally made immediately after the information is filed, and before any rule to plead is entered thereon; tho it is sometimes otherwise.

Judgment for
want of a plea
and sale of
the goods and
writ of deli-
very.

And immediately after the third proclamation is made, and on the same day, judgment being first entered upon the information for want of a plea, a motion may be made by the counsel to the commissioners for a day to be appointed for the sale of the seizure, which the court will order. And on that day the counsel to the commissioners is to move on the said order, that the seizure may be sold pursuant thereto, which the court will also order; and then the seizure is to be set up to cant, and the highest

highest * bidder is declared the purchaser, and thereupon an order is entered of course for a writ of delivery to issue for the delivery of the goods purchased to the purchaser, on his paying the money to the Chief remembrancer; but generally the counsel to the commissioners moves the court, at the same time, that the Chief remembrancer may pay the money to the solicitor of the revenue, which the court will also order.

And note, in the general, where there is no claim, and especially if the goods be of a perishable nature, the solicitor of the revenue moves for a † writ of appraisement, which is granted of course.

Writ of appraisement for the petitioner, in what cases.

If

* In Bunb. 77. it is said, that if there be a condemnation without a trial, the bidder must stand to all hazards; but if after trial the bidder suffers by delay, the court often discharges the bidder. But the reporter adds a quære. And it is likewise there said that the court had some doubt what execution to order against a bidder not having paid his bidding, the process of the pipe being, that which should regularly issue upon an information of the seizure; but that that being long and tedious, they ordered a *feri facias*; as is usual in the case of a personal information. And, in a note there, two cases are cited, where, in such cases, the court upon affidavit issued attachments against the bidder.

† In Bunb. 30. it is said, that after a seizure of goods, the regular steps are to file an information, and then take out a writ of appraisement, upon the return of which the defendant is to enter his claim, and then may move for his writ of delivery. If the prosecutor delays filing an information, or does not sue out a writ of appraisement, the defendant, upon entering his claim in the book in the office, may move for a writ of delivery.

And in Bunb. 59. it is held that writs of appraisement are a necessary part of the information upon a seizure, by the course of the court; besides the act of tonnage, and poundage directs a moiety of the rates to be answered to the King, which shews there is a necessity for a valuation.

And

Claim of
goods seized
and form
thereof.

If any person would claim the goods, he may do so at any time before the rule for judgment for want of a plea is made absolute; and the claim is to be entered in the office of pleas in the Chief remembrancer's office in the appearance book, thus; "A. B. master of the ship or vessel called ——— &c. this day appeared by E. M. his attorney, and claims the property of, &c. at the suit of, &c. who as well, &c."

Appearance
to be entered
with it.

So that at the same time the claim is entered, an appearance is to be also entered for the defendant by his attorney.

Rule, 24th
April, 1716,
recognizances
in what cases
upon claims.

By a rule made in the office of pleas, in the Chief remembrancer's office, the 24th of April, 1716, it was ordered, that upon all informations to be exhibited for ships, wool, or other goods thereafter seized, no person, or persons, be thenceforth admitted to claim property in the same, before he, or they, enter into a recognizance, with good security, to pay the appraised value of the same, the penalties in the acts of parliament made in such cases, and also all such costs and damages, as shall

And in another case there, after a condemnation and sale upon a seizure, it appearing to the court that the species of the goods had not been described with sufficient certainty in the writ of appraisement, the court made a rule to show cause, why the condemnation should not be set aside, and why an attachment should not go against the seizers. Bunb. 89.

Where it appears to the court that the appraisement is at more than the goods are worth, the court will order a re-appraisement; for otherwise the seizing officer might be undone, who must pay the King's moiety, according to the appraisement. Bunb. 49. 185.

be

be awarded on the prosecution of any information, to be brought for the same; unless the party, or parties, who claim property, shall make it appear to the court by affidavit, that such ship, wool or other goods are really and truly his or their property.

And by another order also made there the 5th of June, 1716, it was ordered, that where any person, or persons, come to claim property in ships, wool or other woollen goods seized, or thereafter to be seized, he or they so claiming property shall make it appear to the court by affidavit, that before and at the time of such seizure, the property of the said ship, wool or other goods, was in him or them; and he or they are likewise to make it appear to the court by such affidavit, how he or they came to have the property of such ship, wool or other woollen goods; otherwise no person, or persons, to be admitted to claim a property in the same.

Rule, 5th
June 1716,
no person ad-
mitted to
claim unless
he make affi-
davit of the
property, &c.

Now, in the case of *Forder qui tam*, &c. against eight hogheads of sugar, in this court, the 25th of November, 1734, and the 18th of June, 1735, a question arose upon the afore said two rules, whether the claimant was not to appear in court in person, and claim the goods; and it was debated several days, but no determination was made by the court; but the practice is now to enter the claim by an attorney in manner before mentioned.

The claim to
be by attor-
ney.

If the claimant would have a writ of appraisement, he may; but he is first to apply to the solicitor of the revenue for his consent for that purpose, for which he is to have two guineas; and then upon counsel's motion, and on producing the consent, the court will award the

Writ of ap-
praisement
how to be
obtained.

writ. If it be in vacation time, the Chief Baron, or either of the other Barons in his absence, will upon such application to him at his house make the like rule for a writ of appraisement; which rule the Chief Baron in this case is to sign in the book.

Proceedings
in appointing
the appraisers
and in ex-
ecuting and
returning the
writ.

And then the claimant's attorney is to serve the solicitor of the revenue with the names of four merchants, or other persons of credit, skilled in such affairs, as appraisers; and the solicitor is to strike out two of the names, and let two stand; and then he returns the same, with four named by him on behalf of the revenue, and of these four the attorney for the claimant also strikes out two; so that two are left standing on each side; and to these four, whose names are left standing, and are to be lodged in the pleas office in the Chief remembrancer's office, the writ of appraisement is to be directed; and they are to summon a jury, and to hold an inquiry thereon, as to the value of the ship, goods, wares, or merchandizes, which have been seized; and this writ with an inquisition annexed to it is to be returned into the said office. See the forms of the said writ and inquisition in the appendix to this work.

If the solicitor of the revenue neglects to return the names of appraisers in due time, the officer of the court will strike names for him, according to the method practised in the proceedings in the equity side of this court.

And

And upon this return of the writ of appraisement, and upon a consent for that purpose from the solicitor of the revenue as aforesaid, for which he is also to have two guineas, and upon counsel's motion thereon, a writ of * delivery will be granted upon the claimant's giving sufficient security as is usual. And thereupon the claimant, after the rule is so obtained for the writ of delivery, is to enter into security by recognizance before the Lord Chief Baron if in town, if not before either of the other Barons, in double the value of the appraisement, conditioned that the claimant shall perform and fulfil the judgment of the court upon any information brought, or to be brought, against the ship or goods seized.

Writ of delivery on return of the writ of appraisement.

And this writ of delivery is to be directed to the store keeper, collector, surveyor, or other officer, in whose custody the goods seized are; who, upon receiving the said writ, is to deliver the ship or goods under seizure to the claimant or person for that purpose named in the writ. See the form of this writ in the appendix.

To whom to be directed.

If the solicitor of the revenue should on such applications, either for a writ of appraisement, or a writ of delivery, refuse his consent, then the counsel for the claimant may, on affidavit thereof, and notice given to

The proceedings in case the solicitor of the revenue should refuse his consent either to a writ of appraisement, or of delivery.

* In Bunb. 21. It is held that there are two reasons for granting writs of delivery, viz delay of prosecution, and that the goods are perishable; but that those writs are discretionary in the court. Bunb. 74. It was granted for gold watches, the steel work being perishable; and in Bunb. 30. It is said that no certain rule is laid down what shall be called delay; but that what was most generally agreed upon was, that where a seizure was in the vacation time, and there is no information filed in the term following, if the prosecutor could have tried it that term, this would be a delay to ground a writ of delivery upon.

the solicitor of the revenue, make special application to the court, and they will either grant or refuse the writ as they see cause.

Writ of delivery in what case refused.

In the case of Forder *qui tam* against John and James Wolfe, in this court, the 23d of November, 1734, a writ of delivery was refused, as the evidence for the seizure depended in a great measure on the manner of packing and making up the goods.

Plea to the information, and the proceedings to trial.

When the goods are so claimed the defendant is also to plead to the information; and if it be an issuable plea, as it usually is, then the record is to be made up, and the after proceedings are, as on informations *qui tam* upon penal statutes, pretty much the same with the proceedings in the common law side of this court between party and party.

Few informations *in rem* brought into the Exchequer, and why.

But as has been already observed, most of the offences under the act of customs being likewise offences under the act of excise, informations on seizures in this court are very rare; they being mostly brought before the commissioners or sub-commissioners of excise.

Offence of shipping native goods coastwise without making declaration, only cognizable there.

The following offence under the act of customs, however, seems to be cognizable only in the court of Exchequer, viz. that of shipping native commodities coastwise, without making a declaration to the collector, &c. of the contents, value, &c. and giving a bond conditioned to discharge them in the realm; by which a forfeiture of such goods is incurred.

By

By the act of customs there is a provision, that, for the avoiding of fraudulent composition, no action, bill, plaint, or information be exhibited or proceeded on against any goods, wares, or merchandizes seized, until such seizure shall be registered and entered with the register or officer to be appointed for that purpose in the port of Dublin, and certified by him to be so entered and registered; and until such goods, wares, and merchandizes, be secured or laid up in his Majesty's ware-house, at the custom-houses of the respective ports. And in case the commissioners of the customs shall be dissatisfied, or apprehend any neglect or delay in any person or persons to sue for or prosecute in any action, bill, plaint, or information, as aforesaid, that it shall and may be lawful to and for the said commissioners to appoint any other person or persons, whom they shall think fit, to prosecute; which other person or persons shall be and are thereby declared to be true, proper, and lawful prosecutors or seizers to all intents and purposes whatsoever, and to whom the moiety of the said seizures and forfeitures shall be due and payable, and to none other; any thing in the said act, or any other law, statute, usage, or custom, to the contrary thereof, notwithstanding.

Seizures to be registered and secured in the King's ware-house before any proceedings by bill, &c.

Persons neglecting or delaying to sue, the commissioners may appoint a prosecutor, who is declared the lawful seizer, and shall have the moiety of the seizure.

By rule 36, annexed to the act of customs, all officers whom it may concern in their respective places, shall be diligent and careful to make stay and seizure of goods, wares, and merchandizes, that shall be brought in, or carried out, or intended to be carried out of this realm, contrary to the laws of the same.

Officers to be careful to seize any goods brought in or carried out contrary to law.

And

Goods seized to be put into the ware-house, and there kept until released by sufficient warrant.

And by rule 37, all goods and merchandizes that shall be seized or staid shall, presently after such seizure or stay, be delivered into the charge of the ware-house keeper at the custom-house of the port where such stay or seizure shall be made, there to remain until sufficient warrant and discharge shall be brought for release and delivery thereof.

Officers making seizures forthwith to acquaint the commissioners therewith, and to certify the same to the register of the seizures.

And by rule 38, every officer, who shall make any seizure, shall thereupon forthwith acquaint the commissioners of the customs therewith, and likewise certify the same to the register of seizures in the port of Dublin for the time being, together with the quantity and quality of the goods so seized, the time when, the ground whereupon he seized the same, with such other circumstances as are fit to be known, for exhibiting informations in the Exchequer against the same.

No officer to compound a seizure without license or other lawful warrant.

And by rule 39, no officer or other person shall make any composition or agreement for the seizure or forfeiture of any goods, without * license out of the court of Exchequer, or other lawful warrant first had and obtained.

And

* I do not find that the taking out of these licenses hath been practised here these many years. Lord Chief Baron Gilbert, in his treatise of the court of Exchequer in England, page 186, &c. gives the following account of them :

When a suit (says he) was commenced, even between party and party, they could not compound the same without leave of the court, which was the original of all fines concerning lands and tenements ; and the reason was, because the King had an interest in every suit in his court since there was an amercement in the judgment ; much more in informations, where the King himself was party, the King had such an interest that the informers could not compound without leave of the court ;

And by rule 40, all licenses, compositions, fines, recoveries, warrants, orders, and other discharges, to be had, made, or granted for or upon the aforesaid seizures and informations, are to be entered with the register aforesaid, and the money or monies thereupon due and payable to the use of his Majesty to be paid to the collectors of the respective ports.

Licenses, &c. for forfeitures to be entered with the register, and the money due to the King to be paid to the collector.

And by rule 41, all appraisements of goods, wares, and merchandizes, seized as aforesaid, are to be showed and delivered to the register aforesaid, before they be returned

Appraisements of seizures to be delivered to the register for examination and entry.

court; but yet in many cases, where penalties were great, and the offenders poor, it would have been exceedingly hard if the law had been inexorable, and the informer might not have compounded with the offender; and it would have still been more derogatory to the honour of the Crown if the informer had compounded, and there had been no method found out to have made a composition for the Crown. From hence it is that there is a standing privy seal, by which the commissioners of the treasury, High treasurer, Chancellor, Under treasurer, Chief Baron, Barons of the Coif, and Attorney general, or any one of them, are empowered to give a license to compound; provided no fine be set less than half so much as the informer shall or is to have for his part. In order to see that the King's part be at least equal to one half of the informer's, there must be an affidavit made by the informer of what he receives upon such composition, and then they go back to the officer, and the composition is set, and then it is carried to be signed by the commissioners of the treasury, Lord High treasurer, Chief Baron, Attorney general, or any two of them, who by the said privy seal are entitled to compound the same.

This power was abused by offenders against penal statutes; for after such transgressions they used to set up sham informers in order to get rid of the penalty, and so compound with them for a little, and diminish the King's part almost to nothing: for this cause it was that by the rules of the court the christian and surnames, with the addition of the parties, are to be put into the license, together with the place of their abode; the license is to be signed by a sworn clerk, and entered in a book before the same is signed by a Baron.

And how long this license to compound is to be in force, how the composition shall be recorded, the fine rated and paid, and a writ of delivery obtained thereon, and how this writ is to issue where the fine is paid, and how where security is given, see *ibid.* pag. 188 to 191.

into

If the goods
are under-
valued a new
appraisement
to be made.

into the Exchequer, to be by him examined and entered. And if the goods be too much undervalued, the said register is to make stay thereof, and to acquaint some of the Barons of the Exchequer therewith, to the end that a review and new appraisement may be made of the goods.

Coast bonds,
for which
certificates
are returned,
to be deli-
vered quar-
terly into the
Exchequer.

And by rule 42, all bonds taken for shipping goods to the coasts, for which certificates are returned, shall be delivered quarterly into the Exchequer, with the certificate thereunto annexed and endorsed also thereupon; and every term, after the accompt of the officers that did take them is past, the said bonds shall be delivered to every person that shall sue for the same, paying the usual fees.

All other
bonds to be
delivered into
the Exche-
quer after the
breach of
conditions to
be put in suit.

And by rule 43, all other bonds taken by the collectors that be expired, and all other bonds for which no certificates are returned, according to their conditions, shall be delivered likewise into the Exchequer quarterly, after the breach of such conditions, that process and execution may be had thereupon according to the due course of law.

C H A P. XXV.

OF INFORMATION BEFORE THE COMMISSIONERS OR
SUB-COMMISSIONERS OF EXCISE.

BY 14 and 15 Car. 2. c. 8. commonly called the act of excise, an office is created in the city of Dublin, to be called by the name of the office of excise or new impost, and to be managed by commissioners not exceeding five in number, and also a surveyor; all to be appointed by the Lord Lieutenant or Chief governors of the kingdom.

Commis-
sioners of
excise created
in Dublin,

And the like offices, and in them such sub-commissioners or collectors, are thereby directed to be appointed in all the counties of the kingdom, and in all other cities and places thereof, as the commissioners shall think fitting, to be approved of by the Lord Lieutenant or Chief governors of the kingdom.

and sub-
commissioners
in the coun-
try,

And the commissioners or collectors of excise in their respective districts, or such other persons as shall be authorized thereto, together with such sub-commissioners or collectors, are thereby authorized to * hear and determine all offences and breaches of any clause in said act, other than such as are otherwise thereby appointed; and are,

to hear and
determine
offences
against the
act of excise.

* When a day of trial is appointed by the commissioners or sub-commissioners, the constant practice has been to give the claimant eight days notice thereof, exclusive of the day on which the summons or notice of trial is served, and inclusive of the day of trial, as on trials by *nisi prius* in the four courts in the county of the city, or county of Dublin.

upon notice or information, to proceed to examination of the matter in fact, by summoning parties and * witnesses to appear before them, and examining witnesses upon oath in the presence of the party accused, if he appear; and in case he shall neglect to appear, they are authorized to proceed as if he were present: and upon proof of the fact, by the confession of the party, or oath of one credible witness, they are authorized to give judgment, and issue a warrant for levying any forfeiture, fine, or penalty, inflicted by the act, by distress of the party's goods, or in default of sufficient distress, to commit the party to prison until he pay it.

Informations
for penalties
to be within
six months.

But all informations for any penalty incurred by this act are to be made within six months after the offence shall be committed.

An appeal
given to the
Lord Lieute-
nant, or com-
missioners of
appeals.

And it is thereby provided, that if any persons shall judge themselves aggrieved with any proceedings had by the commissioners, &c. it shall be lawful for every such person to make his † appeal to the Lord Lieutenant, &c. or such as he shall appoint by commission under the great seal; who are empowered to send for parties and witnesses, and all writings, &c. and to examine upon oath and determine all appeals, and confirm or reverse all judgments given by the commissioners, &c. and to discharge any

* By 33 Geo. II. c. 10. witnesses may be summoned to appear before them tho' residing in another district; provided that no such summons shall issue until it shall appear by affidavit before one of the commissioners, or sub-commissioners, that the person summoned is a material witness.

† By 33 Geo. II. c. 10. such appeal must be brought within two calendar months after the sentence given.

person

person committed by the commissioners, &c. and to mitigate all fines, penalties, and forfeitures, imposed by them; provided that in the mitigating such fine, &c. the informer may be duly encouraged for his pains and discovery, according to the nature of the fraud discovered.

And it is thereby enacted, that if any goods seized shall not be claimed or cleared within twenty-one days, the commissioners or sub-commissioners, &c. appointing a general day of sale, and giving publick notice thereof, shall cause the goods to be appraised by two sworn officers, or others, and afterwards sell them by the candle to the highest bidder.

Goods seized and not claimed in 21 days, to be sold.

And of all seizures, fines, forfeitures, and penalties, mentioned in this act, the necessary charges for recovery thereof being first deducted, one moiety is to be to the use of the King, and the other to the person who shall seize, or give any information of and prove any breach of any clause therein.

One moiety of the fines, &c. to the King, the other to the informer.

When a seizure is made of any goods upon the act of excise, if it be in Dublin, the seizing officer is to bring them to the stores at the custom-house, and to make a return thereof in writing to the commissioners, and also to the register of the seizures; and if any petition be preferred to the commissioners, it is referred to the seizing officer, and on his report it either is or is not ordered to stand a seizure. Then the seizing note is sent by the register of the seizures to the clerk of the informations in the said port, who, if it be a general or common case, either as to goods exported or imported, is to prepare an information according to the general forms; which see hereafter in the appendix.

The proceedings upon a seizure under this act.

If it be a case attended with any special circumstances, it is to be brought to the solicitor or to the commissioners, who is thereupon to prepare instructions for the counsel for the commissioners to draw a proper information thereon. For forms, or precedents, see the appendix.

Seizures not claimed by the proprietor within twenty one days forfeited and may be sold.

If the owner or proprietor of the goods do not claim them within twenty one days, the course is to collect all the seizures of the same kind unclaimed, and to insert them in one information, and to enter judgment thereon for want of a claim, and then to sell at the next general sale to be appointed by the commissioners, or sub-commissioners. But this method of inserting many seizures in one information seems liable to great objections. And if on any of the seizures a penalty is recoverable and sued for, a separate information must be entered for these goods, and a judgment of condemnation had thereon, to be ready to be read in evidence on the trial for the penalty.

If a penalty sued for there must be a separate information.

Proceedings before sub-commissioners the same as before the commissioners.

If the seizure be in any other port than the port of Dublin, the informations and proceedings are to be the same before the sub-commissioners as before the commissioners of excise.

The same proceedings in all cases relating to the inland excise.

And in the cases of brewers, vintners, ale-house keepers, distillers, or retailers of strong waters, and all cases whatsoever relating to the inland excise, the like proceedings are to be against offenders, by information, summons, &c.

By

By the 33 Geo. II. c. 10. it is recited that claims had been frequently made of goods seized by persons who never appeared after making such claims, but left the kingdom or the district where the seizure was made, and were not to be found, so as to be served with a notice or summons for trial as the law directs; by reason whereof several parcels of goods had remained under seizure for many years, and until they perished, on account of not being duly condemned, to the prejudice of his Majesty and the informer; for remedy whereof, it is thereby enacted, that in all cases where a seizure shall be made of any goods, &c. and a claim shall be tendered by the owner, or proprietor thereof, or by any person deputed to make such claim, that the person tendering such claim shall at the foot thereof mention some particular house within the district where the goods are seized, where notices or summonses shall be left or served; and in default thereof that the claim shall not be deemed legal or received, but it shall be lawful to proceed to the condemnation of such goods, in such manner as by law may now be done for want of a claim; and that all notices or summonses served or left for such claimants, with any person above the age of sixteen years residing at such house as shall be so mentioned or expressed at the foot of said claims, or posted on the door eight days before the time appointed for determining the claim, if no person resides therein, shall be as valid and effectual as if the persons making such claim were personally served with such notices or summonses.

When a claim is made, mention is to be made at the foot of the claim of some house, within the district, where notice shall be served.

And

Disputes concerning rights of seizure.

Commissioners and sub-commissioners in their districts to determine the right to seizure, &c.

Sub-commissioners to take an oath before hearing a cause (if required) that they are not interested in the seizure.

And by the said act of 33 Geo. II. c. 10. reciting that, where two or more persons have been concerned as informers or discoverers, several disputes have arisen between the parties pretending to be the real informer, and discoverer, to the great detriment of his Majesty's revenue, and discouragement of such informers; and that a just distribution of the rewards given to such informers would be a great encouragement to the trade of this kingdom, it was enacted, that in every case, where two or more persons shall claim any right to any reward, for or on account of any seizure, penalty, or forfeiture, they may be entitled to, the commissioners, or sub-commissioners in their several districts, who shall hear and determine such seizures, should hear the several claims and demands of such persons, as may think themselves entitled to any reward, for, or upon account of any information, or discovery, and give or distribute the same in such manner, or proportions, as they should order and direct; which order, or sentence, should be final and conclusive to the said parties.

And it is by the said act enacted, that the sub-commissioners, collectors of excise, and other persons that may be authorized, and appointed to hear and determine the matter of complaint mentioned in such information, and every of them, shall, if thereto required by the party or parties against whom such information is made, take an oath that he is not interested, directly or indirectly, in the matter or complaint then depending before them, and that he is not to gain or lose thereby on any account whatsoever;

whatsoever; which oath the clerk or register of the seizures and forfeitures in the particular district is thereby authorized and required to administer; and if such sub-commissioner, collector of excise, or any other person, to be so appointed shall refuse to take the said oaths, such sub-commissioner, collector, &c. shall be disqualified, and rendered incapable to hear, determine, or give judgment upon the matter then depending before them, and contained in such information, and all proceedings to be had before them after such refusal shall be null and void.

And by the said act, reciting that the prosecutions before the commissioners of appeals, tho' carried on in a summary way, pursuant to the laws in force in this kingdom for that purpose, had been artfully delayed by persons prosecuting the said appeals, upon account of some informality, or defect of form in the proceedings, to the great discouragement of the prosecutors, or informers, it is enacted, that no judgment, or sentence of the commissioners, or sub-commissioners of excise, shall be reversed for any informality, imperfection, or defect in form, either in the information, proceedings, or judgment brought before or given by the said commissioners, or sub-commissioners respectively.

No judgment of the commissioners or sub-commissioners of excise to be reversed for informality, &c.

And whereas it often happens that the claimants of goods seized by the officers of his Majesty's revenue, on condemnation thereof by the chief commissioners or sub-commissioners in their respective districts, enter appeals against such judgments of condemnation, in order to delay the sale of such goods so condemned as aforesaid, that they may thereby perish, and his Majesty and the seizing officer lose the benefit of the said seizure, for
remedy

Perishable goods seized to be sold twenty one days after the condemnation notwithstanding any appeal.

remedy thereof, it is by the said act enacted, that all perishable goods, and commodities, which shall be seized by any of the officers of his Majesty's revenue, or other person, or persons, and condemned as aforesaid, shall and may be sold as the law directs, at any time after the expiration of twenty one days after the condemnation thereof, by order of the Chief commissioners of his Majesty's excise, notwithstanding any appeal brought, or to be brought, from the said sentence of condemnation, six days notice being previously given in manner herein before mentioned to the claimant, or left for him at his, or her usual place of residence, and an affidavit being thereof made; and the produce arising by or from such sale to be accounted for and paid to such person and persons as shall be by law entitled thereto, in ten days after the time given by law for appealing shall be elapsed, or in case of any appeal in ten days after the sentence of condemnation shall be affirmed, or the appeal dismissed; and that in case of a reversal of such sentence of condemnation, the produce arising by or from such sale shall, in ten days after such reversal, be accounted for and paid to the owner or owners respectively of the goods so seized and sold, in full satisfaction for the goods so seized.

And the produce to be accounted for and paid to such persons as are legally entitled to the same.

All forfeitures and penalties inflicted by this act to be sued for as prescribed by the act of excise.

And it is by the said act also enacted, that all the forfeitures and penalties thereby inflicted (other than such as are otherwise thereby appointed) shall and may be sued for and recovered, levied and applied, in such manner and form, and by such ways and methods, as are prescribed and appointed in and by the act of excise.

By

By statute 1 Geo. III. c. 7. the aforesaid act of the 33d Geo. II. and all and every the clause and clauses therein contained (except such clause or clauses as are thereby altered or repealed) are continued for the space of two years from the 24th day of June 1762 and to the end of the then next session of parliament.

Act of 33d
Geo. II. con-
tinued.

And by the said act it is enacted, that it shall and may be lawful to and for the commissioners of appeal, under their hands and seals, from time to time, to authorize and empower such person or persons as they shall think fit, in the several counties of this kingdom, to be commissioners to take and receive affidavits, concerning any cause depending, or other proceedings in causes of appeal, before the commissioners of appeal; and all affidavits taken as aforesaid, shall be of the same force, as affidavits taken before the said commissioners of appeal are, or may be; and for the swearing and taking of every such affidavit, the person so empowered, or taking the same, shall receive a fee of one shilling and six pence, and no more.

Commission-
ers of appeal
authorized to
grant com-
missions for
taking affida-
vits in the se-
veral counties
in the king-
dom.

And no affidavit taken by any commissioner, authorized as aforesaid, shall be read or made use of before the commissioners of appeal, unless the commissioner or person that takes the same, mention in the caption thereof the day of the month when, and also the place and county where, the same shall be sworn, and that he knows the deponent, or has been credibly informed that he is the real person mentioned and described in such affidavit.

Directions
concerning
the caption of
such affida-
vits.

And whereas by the aforesaid act of excise, or new impost, all goods and merchandizes seized for being run,
VOL. I. O O or

Owners of goods seized, and masters of vessels seized, for breach of the excise laws, may apply for a writ of appraisement, as in cases to be heard and determined in the Exchequer.

And on return thereof, a recognizance to be entered into in the court of Exchequer.

or intended to be run, were to be brought to the office of excise next adjoining to the place where such goods were so seized, there to be detained and kept, until the same should be condemned or discharged; in manner as by the said act of excise is provided, which had, in many cases, been attended with inconveniencies and damage to the owners of such goods and merchandizes, by losing their market, before a trial could be had thereon; and many disadvantages had also arisen, by the detention of ships or vessels laden with such goods and commodities, thereby preventing them from proceeding on their intended voyages; for remedy thereof it is enacted, that it shall and may be lawful to and for the owners of any goods, seized for being run, or intended to be run, and to and for the master or commander of any ship or vessel seized for the breach of any of the laws of excise, to apply (as by law may now be done, in cases to be heard and determined in the court of Exchequer) for a writ of appraisement, to value and appraise such goods and merchandizes, and ship or vessel so seized, on which such proceedings shall and may be had, as have been usual in cases where by law writs of appraisement have issued; and that on return of the appraisement, or value of such goods and commodities, and of such ships and vessels, the party or parties applying for such writ of appraisement, together with two sufficient sureties, shall enter into a recognizance to his Majesty in double the value of such appraisement, before the Chancellor, or one of the Barons of the court of Exchequer, or before such person or persons as they, or any of them, shall appoint by commission to be issued out of the said court of Exchequer, conditioned to pay such appraised value, and all other penalties and forfeitures attending such

such seizure, in case the same shall be condemned; and that thereupon the chancellor, or any of the barons of the said court of Exchequer, shall award a writ of Delivery in the usual manner for such goods and merchandizes, and the ship or vessel so seized as aforesaid.

Writ of Delivery.

Provided always, that upon the acquittal of such goods and ships or vessels from such seizure as aforesaid, by the chief commissioners of the revenue, or their sub-commissioners, in their several and respective districts, or by the commissioners of appeal (in case an appeal shall be brought) and due proof made thereof before the said Chancellor, or any of the Barons of the said court of Exchequer, and notice given to his Majesty's Attorney general for the time being, that then the said Chancellor, or any of the Barons of the said court of Exchequer, shall and may order the said recognizance to be vacated; and the same shall afterwards be null and void to all intents and purposes whatsoever.

On acquittal the recognizance to be vacated.

And by the said act it is also enacted, that all the forfeitures and penalties inflicted thereby shall and may be sued for and recovered, levied, and applied in such manner and form, and by such ways and methods, as are prescribed and appointed in and by the act of excise.

Penalties and forfeitures inflicted by this act to be sued for, as directed by the act of excise.

And the aforesaid statute, as to the several matters herein before-mentioned, is to continue and be in force for two years, from the 24th day of June, 1762, and from thence to the end of the then next session of parliament.

The said act
and the stat.
33 Geo. II.
further con-
tinued.

And by the statute of 3 Geo. III. c. 21. the aforesaid act, as also the statute 33 Geo. II. c. 40. are further continued for two years from the 24th day of June, 1764, and from thence to the end of the then next session of parliament.

One commis-
sioner of ex-
cise empower-
ed to hear and
determine
complaints
for selling
spirits with-
out license.

And by the said act it is enacted, that it shall and may be lawful to and for any one or more of the chief commissioners of excise to hear and determine all complaints, and to levy all forfeitures that shall be made or incurred by or against any person or persons selling * spirits without license, in the same manner, and as effectually, to all intents and purposes, as any three of the said chief commissioners were then empowered to do, with such remedy of appeal as is therein mentioned.

The three last
acts conti-
nued,

And by the stat. of 5 Geo. III. c. 16. the said three last acts, and all and every the clauses therein respectively contained, (except such parts thereof as are altered or amended by this act) are continued for two years from the 24th of June, 1766, and from thence to the end of the then next session of parliament.

The four last
acts conti-
nued.

And by the stat. of 7 Geo. III. c. 27. the said four acts are continued for two years from the 24th day of June, 1768, and from thence to the end of the then next session of parliament.

* Or, by 13 Geo. III. c. 8. wine, cyder, beer, or ale, by retail without license.

By

By stat. 11 Geo. III. c. 7. it is enacted, that no writ of *replevin*, writ of *deliverance*, or writ of *re-captio*n, shall, at any time hereafter, without leave first obtained for that purpose from his Majesty's court of Exchequer, be executed for any goods or chattels seized by any officer of excise, for being run, or intended to be run, without payment of duties due and chargeable thereupon, to his Majesty; or for goods and commodities detained to answer the payment of duties, due and chargeable thereupon, to his Majesty, unless such goods and chattels shall be first acquitted by due course of law.

No writ of *replevin*, *deliverance*, or *re-captio*n to be executed for goods seized for breach of excise laws without leave from the court of Exchequer.

And by said act the said five former acts (except such parts thereof as are thereby altered, repealed, or amended,) are continued for the space of two years from the 24th day of June, 1772, and from thence to the end of the then next session of parliament.

The five last acts continued.

And by stat. 13 Geo. III. c. 7. the said several acts (except such parts thereof as are altered, repealed, or amended thereby) are continued for the space of two years from the 24th day of June, 1774, and from thence to the end of the then next session of parliament *.

The six last acts continued.

* One can scarce avoid lamenting that any necessity should ever have happened to cause the institution of a judicature, which so much seems to clash with the spirit and genius of the British constitution, as that which is created by the excise laws; an institution by which that bulwark of British liberty, a trial by jury, is partly subverted; and the determination of property, sometimes to a great amount, transferred from the established courts, to persons who in the general, cannot either from their course of education or experience, be supposed to be acquainted with the modes of legal reasoning, or the proceedings of justice.

Wherefore, the commissioners and subcommissioners who are the judges appointed by those laws, are ever to bear it in mind, that although those revenues are to be duly collected, and although none of the rights of the Crown are to be remitted, yet that the scale of justice is to be holden with an even hand, between the Crown and the subject, and that the rights of both are to be determined according to the rules of law and justice, for the safety and advantage of both.

Another circumstance attending the trials upon these laws, apparently repugnant to the ordinary course of proceedings in the superior courts of justice, is that of admitting the testimony of the informer, who is to receive a moiety of the penalty or forfeiture, as he is swearing under one of the strongest temptations to perjury; and yet, were it not so, and that the officers were not to seize on information, or detection of frauds until they could procure persons to attend them for evidence, there would be but very few convictions on these laws. Wherefore also the judges upon these trials, when the party so interested is the only evidence to be had, are to act with all the caution their prudence and discretion can suggest to them, and especially as the advantage is not reciprocal, the testimony of a trader, even of the fairest repute, being never to be admitted where he is himself the defendant upon any trial on these laws; nor in truth ought it to be, as the same necessity cannot be urged on the one side as on the other.

Not that whilst this most important office shall be exercised by men of liberal and generous minds, a contrary conduct can be apprehended; yet should it happen otherwise, and that any of these persons indiscreetly warmed by the zeal of office, or influenced by any other as improper motives, should consider themselves not merely ministers of justice, but servants of the Crown, and as such in duty bound to multiply forfeitures; or should neglect the modes of legal proceedings, it is easy to conceive what injury might be the consequence of their decisions, and how far these revenues (which are in fact granted for the publick) might then become what never was the intention, an engine of oppression to the fair trader, and be nearly as great an injury to those revenues as suffering transgressors to escape with impunity.

It is true, an appeal is given to other commissioners who are generally of the profession of the law; but when the delay, the heavy expence, which cannot but attend such a step, with the frequent consequential losses, are considered, as also, that the appellant has the whole weight of the revenue to contend with, and that no cost is to be paid (which is the case on both sides in these suits let the litigation be ever so groundless) it must be confessed, that the contest may be very unequal and the remedy not adequate. Besides, although actions for damages have been maintained, where the sentence below has been against the informer or seizer, yet it is otherwise on the reversal of such sentence when in his favour; it having been always deemed a reasonable foundation for the prosecution on these laws. So determined in the case of Reynolds against Kennedy, 1st Wilson, 232, B. R. which see, as also, the cases therein cited with the reasons at large.

It is also to be wished on the other hand, that in cases where the constitutional mode of proceeding hath been preserved, juries would seriously consider, that the prevention, restraint, or punishment of frauds or impositions in the payment of the duties, is not only a benefit to the publick by the augmentation of the revenue, but likewise to the fair trader, who, should such frauds be permitted, or the punishment of them eluded, could no longer subsist; and that informers and seizing officers, who are absolutely necessary for these purposes, are only blamable for what they illegally and wantonly or wickedly do in the execution of their offices; and when that is the case, every unprejudiced person cannot but admit, that the injured party is most justly entitled to an adequate recompense in damages upon any action or suit for the purpose.

C H A P.

C H A P. XXVI.

OF DEBTS DUE TO THE KING, AND HIS REMEDIES FOR
RECOVERY OF THEM.

THIS being a subject not very distinctly treated of in law books, and the stat. of the * 33 Hen. VIII. c. 39. in England, which is not in force in this kingdom, having made several alterations in the common law there with respect to this matter, it will be necessary to consider it with great caution, advancing nothing but what is supported, or seems to be inferred from the best authorities, and leaving a full discussion of the subject to abler hands. And for the sake of method and perspicuity it will be necessary to arrange what seems most material on this head under the following particulars, viz.,

* A doubt has been sometimes entertained whether this act be not in force in this kingdom, so far as it relates to the prerogatives of the Crown, by virtue of an act made here in the same year of that King's reign, by which the King of England, his heirs and successors, are to have the style, title, &c. of Kings of Ireland, with all pre-eminences, prerogatives, dignities, &c. to the estate and majesty of a King imperial appertaining. But this notion is destitute of any foundation; the latter statute plainly being intended to change the estate and dignity of Lord of Ireland to that of King, without enlarging in any respect his legal prerogatives; much less those which he derived under a statute not then existing; the session of parliament in which the Irish act was made having commenced the 13th of June, 1541, and ended the 20th of July following; whereas the session of parliament in which the English act was made did not commence until 16th of January following. And surely whoever considers the spirit of tyranny and inconsistency which marks the English laws of that reign, would not be very strenuous to contend for their existence in this kingdom by any strained inference. The one in question particularly contains several clauses which seem very obscure and almost unintelligible.

33 Hen. VIII.
sess. 1. c. 1.

First,

First, of the King's debtors and his remedies against them.

Secondly, of the King's precedence with regard to execution.

Thirdly, of the King's prerogative with regard to the debtor of his debtors.

And as to the first particular, viz. of the King's debtors and his remedies against them, it appears by the ancient usage of the court of Exchequer, that from the earliest ages the Crown claimed and exercised several very great prerogatives with regard to the recovery of its debts.

King could
protect his
debtor.

The King could grant a writ of protection to his debtor, that he should not be sued or attached until he paid the King's debt. But this was productive of great inconvenience; for, to delay other creditors, the King's debts were the more slowly paid. For remedy whereof, by 25 Ed. III. c. 19. Eng. it was enacted, that other creditors might have their actions against the King's debtors, and proceed to judgment; but not to execution, unless such creditor should take upon him to pay the King's debt, and then he might have execution for both debts. 1 Inst. 131 b. F. N. B. 28. Dyer 328. But such protection would not lie after a suit commenced. Hard. 26. Nor could the debtor avail himself of this privilege without having the writ of protection. Cr. Car. 389. And see Hob. 115. where it is said that the restraint of the subject, as to proceeding to execution, imposed by the statute, relates to executions on lands and goods, and not of body.

And

And the King's debtor could not make a will to dispose of his chattels to the King's prejudice; nor could his executors have administration of his chattels without permission from the King, or from the justicier, or the barons of the Exchequer; which they obtained upon giving security to pay the King's debt: and if the debt claimed by the King were a doubtful one, the King would sometimes command the executors to retain in their hands so much as the sum amounted to, till the matter was discussed in the Exchequer. Madox 663, 664, 665. 2 Ro. ab. 158 H.

His debtor could not dispose of his chattels by will to the King's prejudice.

If one died indebted to the King, and it were doubtful whether the chattels of the deceased would amount to satisfy the debts due to the King and to other persons, it was usual for the King to seize into his hands the chattels of the deceased, in order to have a satisfaction of his debt, before any other creditor of the deceased was paid, or the chattels were eloiigned, or applied to any other use. But when he so seized them, he allowed a competent part for the decent funeral of the deceased. Madox 665. See magna charta, c. 18. 2 Inst. 32.

King could seize the chattels of his debtor deceased.

At common law, if a common person obtained a judgment for debt or damages, he could not have the debtor's body or his lands during his life in execution; but the body, * lands, and goods of the King's debtor were liable. 3 Co. 12.

King could have execution against body, lands, and goods.

* But in Palm. 167 it is doubted whether it is not merely by the custom of the court of Exchequer that lands can be extended for the King's debt, and not upon the judgments of any other courts, except the debt be estreated into the Exchequer.

Against heirs,
terre-tenants,
executors, &c.

The King might levy his debt not only against the party himself, his lands and goods in his own hands, but in the hands of his heirs and terre-tenants, and against his executors and administrators, or if he had no executors or administrators, then against the possessors of his goods. Dyer 160. a. 11. Co. 93. a. Bunb. 322. But this must be understood, as to goods, where they were not aliened *bona fide* before the *teste* of the execution. 8 Co. 171.

Process *ad*
computandum
lay against
terre-tenants.

And therefore where an officer and accomptant of the King died in arrear to him, the sheriff having returned that there were no executors or administrators, process *ad computandum* issued against the terre-tenants of his lands, although no judgment had been against himself in his life time. Dyer 324. And in Plowd. 321 a. where this case is cited, it is laid down still more generally, as held therein, that if any person be accomptant to the King, or if any money, goods, or chattels personal of the King come to the hands of any subject by matter of record or matter in deed, the lands of such subject are by the course of the Exchequer charged with the debt, and subject to the King's seizure, in whosever's hands they shall come afterwards, whether it be by descent, purchase, or otherwise; and that the law of the Exchequer is considered in such case as the general law of the realm, and not as the law of the Exchequer only. But this seems to be laid down too largely, and is not at all warranted by the determination in Dyer *.

* See Favel's case in the time of Ed. III. Dyer 160. a. where it being found that, after he was appointed a collector, being *languidus in extremis*, he alien'd his lands, goods, &c. and died without heirs or executors, process *ad computandum* was issued against the terre-tenants and the possessors of his goods. But it should seem that this was on a supposition that the alienation was in order to defraud the King.

A *scire*

A *scire facias* issued against commissioners of prize goods, grounded upon an inquisition, whereby they were found indebted to the King in a sum of money for prize goods, and to shew cause why the King should not have execution for this debt. And upon demurrer it was insisted that a *scire facias ad satisfaciendum*, which is a judicial writ, does not lie before the debt be determined upon record; for that it is uncertain what the debt is, by reason of the allowances that are to be made; that * process of the pipe would not lie, which is not so strong a process; (for, by this course, body, goods, and lands might be taken into execution, when perhaps nothing was due;) and that the auditing and stating accounts is a judicial act, which ought to be done by the Barons, and not by inquisition. And by Hale, Chief Baron, a *distringas ad computandum* is the usual process. Hard. 228.

Scire facias ad computandum the proper process where the King's debt is not determined.

All debts to the King on record bind the debtor's lands from the time they are contracted: for all lands being held mediately or immediately from the King, when any debt was recorded of any person it laid the estate as liable to such debt as if it had been a reservation on the original patent or first feudal donation. And therefore as the King

King's debts on record bind the debtor's lands, Gilb. Exc. 88. 122.

* Summons of the pipe issued against a man to levy £500 upon a *super* set upon him by a collector; and a motion was made to supersede it, because it could not be pleaded to, and it was superseded: for, by Lord Chief Baron Hale, summons of the pipe ought not to issue but for a debt upon record, or a debt stated and determined, and not for money due by matter *in pais*, as this case is; wherefore if a collector in chief charge his under collector in account, or an accountant charge another together with himself for goods of the King's sold to him, and not paid for, summons of the pipe shall not issue in those cases, but a *scire facias*, or a *distringas ad computandum*, to which the party may plead; for that these debts are not debts of record, but arise upon the accountant's charge only; and so here; and a *scire facias ad computandum* was awarded. Hard. 322. Same point determined, Hard. 504.

could seize the land for non-payment of the reserved rent or service, so he could seize it for any debt with which it was charged.

A trust in fee extendible for the King's debt.

A trust in fee of lands is liable to the King's debts by the course of the Exchequer; for the writ of *extendi facias* for levying the King's debts is of the debtor's lands, or of any land of which any other person was seized to his use; tho' such an estate does not escheat in the case of felony, because there is a tenant to answer the Lord's service. Hard. 495. 3 Chan. rep. 35. See 1 Vent. 132.

Or a term attendant on the inheritance.

Where a term is attendant on the inheritance, if the King extends the inheritance, he shall have a right to the term; but if the term be mortgaged to one who has no notice of its being attendant on the inheritance, the mortgagee shall hold it against the King. Prec. Cha. 125. 2 Vern. 389.

Where land granted by the King shall not be extended for a debt due to him.

The King's receiver being indebted to him for arrears of his receipts, and being seized in fee of land, conveyed it in fee to I. S. who conveyed it to the King in fee; and the receiver took it again from the King to him and his heirs; and afterwards the receiver became further indebted upon his account to the King. It was held in the court of wards that this land was not extendible for any of the said debts; because the land itself was never chargeable in itself, but in respect of the person who was debtor, as in the case of a statute staple; so as, when the King took the lands, the debt was not thereby discharged, but might be recovered against the debtor himself; but the land in the King's hands was not chargeable; and then when the King conveyed the land over he could not against his own conveyance charge the land. But the Chief Baron doubted it;

it; and therefore the court decreed for the discharge of the land, without prejudice to the use of the Exchequer for the King's debt there. Hob. 45. But quere of this case, for it seems a strange determination.

A person being seized of lands made a conveyance with a power of revocation, and afterwards died indebted to the King, and without having revoked it; it was held that the land was extendible for the debt. 2 Roll. 295. Godb. 289.

Lands conveyed with power of revocation extendible.

But it was reckoned an abuse of the feudal prerogative if the King seized the lands or person of his debtor where there were goods sufficient to answer the debt: wherefore it was enacted by *magna charta*, c. 8. and declared as part of the liberty of the subject, that the King or his bailiffs should not seize any land or rent for any debt, whilst the chattels of the debtor are sufficient to render the debt, and the debtor is ready to satisfy it.

King restrained by *magna charta* from seizing lands if goods sufficient.

By these means the abuse of the prerogative was totally hindered, and the King could not levy his debt on the land, whilst there were goods sufficient to answer it. From whence it became necessary to issue the summons of the * pipe against the debtor, which is a process against the goods only; and when any thing was *nihil'd* on the summons of the pipe, then, and not before, the second remembrancer's process, sometimes called the long writ, or prerogative process, issued, which is against body, goods, and lands, &c. heirs and executors. Gilb. Exc. 124.

Which introduced the summons of the pipe.

* But though the nature of the process of the pipe is so clearly pointed out, in this kingdom the summons of the pipe is against body, goods, and lands. When this practice commenced, which seems to have been originally through the mistake or ignorance of the officers, I have not been able to learn.

And

Alteration of
the law in
this respect
by 33 Hen.
VIII. c. 39.

And thus the law stood in England until the 33 Hen. VIII. c. 39. by which it is enacted, that every suit for the King's debts, recognizances, obligations, or specialties, shall be made in the several offices and courts of his Exchequer, and other courts of revenue, under the seal of the said courts, by *capias*, *extendi facias*, *subpena*, attachment, and proclamation, if need shall require, or any of them, or otherwise, as unto the said courts shall be thought by their discretion expedient for the speedy recovery of the King's debts.

From the time of making this statute of 33 Hen. VIII. c. 39. Lord Chief Baron Gilbert says the practice commenced of making *capias*, *fieri facias*, or extents, at the discretion of the court, to levy the King's debts.

Prerogative
writ supposed
to be intro-
duced by the
statute.
2 Inst. 19

Lord Coke says, that after this statute, the usual process to the sheriff was, "that you diligently, by the oaths of good and lawful men of your bailiwick, &c. inquire what goods and chattels, and of what price, he the said I. S. had in your bailiwick, &c. and you shall take them all into our hands, to the value of the debt aforesaid, and thereout cause to be made the debt aforesaid, &c. and if it shall happen that the goods and chattels of the aforesaid I. S. shall not be sufficient for the payment of the debt aforesaid, then you shall not omit by reason of any liberty, but you shall enter it, and by the oaths of good and lawful men diligently inquire what lands and tenements, and of what yearly value, the said I. S. had or was seized of in your bailiwick aforesaid, &c. and all and singular the aforesaid, in whose hands soever they shall be, you shall extend and take into our hands, &c. and you shall take the aforesaid I. S. so that you have his body to satisfy us of the debt aforesaid, &c."

But

But Lord Chief Baron Gilbert, with great reason, thinks this writ might have been used before the statute, without any violation of *magna charta*; because it seems so contrived that an inquisition should be found whether the debtor had any goods and chattels; and if upon the inquisition there were not sufficient found, then to extend the land, and take the body; and that therefore it seems to be a writ that was used in cases of necessity, before 33 Hen. VIII. but that since that statute there may be a *capias*, *levari*, or *extent*, without any inquisition touching the goods.

But seems to
be before.
Gilb. exc.
128.

There are, according to L. C. J. Holt, five several sorts of executions for the King. First a *capias ad satisfaciendum*, which commands the sheriff to take the body of the debtor. Secondly, a *fieri facias*, to sell his goods. Thirdly, an *extendi facias*, to extend his lands, &c. Fourthly, a writ, called the * long writ, comprising all the former. Fifthly, a *levari facias*, to levy the rents, issues, and profits of the lands, as in case of forfeiture of issues or of profits to be taken upon an outlawry; and upon this latter writ only, the cattle of a stranger *levant* and *couchant* upon the land may be taken. Comyn 51. 1 L. Raym. 306.

The several
executions for
the king.

The writ of *extendi facias* or extent commands the sheriff to seize the lands and tenements, goods, chattels, and debts of the debtor, and to appraise them and extend and take them into the King's hands, until he shall be satisfied his debt; with a proviso that he sell no goods, until further process. It is said to be grounded on the aforesaid statute of 33 Hen. VIII. and is so mentioned to

The nature of
the extent for
the King.

* But note, this seems to be a different writ from the long writ, or treasurer's remembrancer's process.

be,

be in the end of the writ. It issues from the equity side of the court, which is always open, and used formerly to sit much longer than it does now. When the court does not sit, they are made out, in England, upon the *fiat* of a Baron, which is in the nature of an award of the court, and they cannot be ante-dated before the *fiat*. 2 Strange 749. Bunb. 62.

Bonds to the
Crown when
introduced.
Gilb. Exc. 96,
165.

Before the time of Hen. VIII. there were few bonds given to the Crown. But recognizances might be taken to the Crown; for they were matters of record, and the King could not take but by matter of record. But towards that time, as the revenue increased, and merchants were obliged to make payments, the customers and collectors received bonds from the parties to the King. These collectors were no more than bailiffs or receivers, and not as justices between the King and the party; and therefore the acknowledgements before them were not in a court of record; and there is this difference between them and bonds of record, that these were immediately levied by *levari*; but those not of record could not be levied by *levari*, but a *scire facias* was to issue thereupon.

Difference
between
bonds to the
Crown and
recognizances.
Gilb. Exc. 97.

And the reason of the difference is, that where an obligation is acknowledged in a court of record, such recognizance is the same as a judgment, the conusor being personally present, and the court supposed to know him as much as a defendant against whom they give judgment. And hence it is that the *levari* issues, and all the other prerogative process; and that the debt cannot be discharged until there be a receipt upon record. But where the King's ministerial officer takes an obligation to the King, such obligation is not of record; but when the officer delivers such obligation into court, the time of such delivery

very is recorded; so that if the obligation be just and the conusor has nothing to say against it, nobody can controvert the time of its *lien*; because the delivery is of record, and therefore it ought to bind from that time. But the obligation is no more than a warrant of attorney for the ministerial or other person to delivery it of record; for being an act in *pais*, and not of record, the conusor may come in upon the return of the *scire facias* and traverse the obligation; but in this it differs from a warrant of attorney; for if a man forge a bond, and warrant of attorney, and then confess judgment, the defendant can never deny the deed, if a *scire facias* issue after the year; but in this case there is no judgment upon the bond, for the bond is only delivered on record, and the judgment arises only on the *scire facias*.

When a bond or recognizance to the Crown is to be put in suit, it is to be lodged in the Chief remembrancer's office, and from the time of delivery of the former (which is to be recorded by him) it binds the lands of the obligor. And thereupon *scire facias* issues thereon, directed to the proper county, or two to the sheriffs of the city of Dublin, let the place of abode of the party be where he will, to summon him to show cause, if any he can, why execution should not be.

Proceedings
on bonds or
recognizances
to the Crown.

If the sheriff returns a *scire feci*, then the officer is to enter rules to appear and plead thereon, as on an information; and the proceedings are as on such writs in suits between party and party; with this difference, that when the three first rules to plead are expired, a fourth rule is entered, viz. that the defendant plead in four days, or that judgment be entered against him, without further motion;

On *scire feci*
returned,
rules to plead.

and if no plea be filed in these four days, judgment may be entered without procuring a certificate of no plea.

On two *nibils* returned, rule for judgment.

If the sheriff returns two *nibils*, the officer will upon application enter a rule of course for judgment, if no plea in four days, which is the *quarto die post*, for two *nibils* are deemed presumptive notice, and equal to a *scire feci*; and if no plea be filed in these four days, he will enter the judgment.

No judgment usually entered.

But upon these *scire facias*, no judgment is usually entered, which is less prejudicial to the debtor, for then he may obtain leave to plead; and it is as beneficial to the King to have an extent upon the bond or recognizance itself as upon a judgment.

Leave may be given to plead after judgment.

If judgment should go upon two *nibils*, and the defendant makes affidavit that he has a reasonable and just defence to make, and that he is ready to make it, the court will, upon motion, give him liberty to plead*.

Upon defendants pleading, process to stay.
Gilb. Exc.
173.

If the defendant plead to the *scire facias*, process is to stay till the plea is determined; but if goods or lands be extended, process is not to stay without special order of the court, upon bringing into court the goods or the value

* In the case of the King against Thompson, in this court, 26th November 1748, and 29 June 1750, the defendant having executed a bond to the King for performance of covenants to keep barracks in repair, writs of *scire facias* issued thereon to the sheriffs of the city of Dublin in the usual manner, and two *nibils* being returned, the King had judgment, and a writ of *levari* issued; but it appearing to the court upon a motion for the defendant, that the defendant lived at Waterford, and therefore was not summoned, and the bond not being for the payment of money but for performance of covenants, which appeared by affidavits to have been performed, the court ordered the judgment and *levari* which issued thereon to be set aside, and that the defendant should be at liberty to plead to the *scire facias*, although the application was made upwards of four months after the *levari* had issued.

thereof,

thereof, or the mesne rents of the lands, or giving security to abide the order of the court; and the reason is, because when a man pleads in discharge of the *scire facias*, he pleads in discharge of the debt, and therefore the debt is in suspense till the plea is determined; but where the lands and goods are extended, and he comes in to plead, it is to discharge an execution executed; and therefore nothing is to be stay'd, until security be given to answer the goods or the mesne profits of the lands.

If a bond be entered into to the Crown, with a warrant of attorney to confess judgment, the warrant is brought to the officer, who enters a consent in his book of judgments, that judgment be forthwith entered up for the King, and that execution shall issue: In this case there is a *scire facias* made out, signed by the officer and filed, but never sealed; which is in the nature of a declaration at common law, and the judgment is made up as those on the plea side by *cognovit actionem*; because they would not stay the return of two *scire facias*, to delay the King's execution, nor clog the rolls with two writs and two returns from the sheriff.

Proceedings
upon bonds
with warrant.

Upon the writ of extent the sheriff is to hold an inquiry in order to find the lands, &c. and the yearly value thereof by examination of witnesses; which finding he is to return, and that he hath seized the lands into his hands for his majesty's use.

Proceedings
upon an ex-
tent.

And immediately upon his return, by the practice in England, a *levari* issues, to levy the mesne rates half yearly, or oftener if it be required, until the principal debt, with costs and damages, as the court shall think fit,

And *levari* in
England.
Gilb. Exc.
170.

be satisfied; but the party may come and plead at the return of the extent, before any profits be actually levied.

How the
lands are put
in charge.
Gilb. exc. 171.

And when the *levari* goes out, the remembrancer's office writes the lands in charge to the pipe, and from thence forward they are in charge on the summons of the pipe, and the sheriff returns the issues and profits of them annually; so that it seems, that upon the first issues he answers to the *levari* before the Barons, and those issues are drawn out into the pipe, in order to charge the sheriff, that the next year the summons of the pipe may go out for the same issues, because the lands are then within the complete charge of the sheriff.

Practice here
by granting
custodiams.

But the practice here is very different; for upon the return of the extent (which is here called a *levari*, and seems to be confounded with it) the solicitor for the Crown is to move for a *custodiam* and injunction; and the court will order that the clerk of the pipe do make out a *custodiam* of the lands, which is thereupon made to the collector of the district, or of late more usually to the solicitor, on account of the frequent changes of the collectors, in trust for the King, during the King's pleasure, at the yearly rent of * five shillings; and the court will at the same time order that the chief remembrancer do issue an injunction, for putting the custodee or his assigns into the possession of the lands. But for the further proceedings hereon, see chap. 30. of *custodiams*.

* It is likewise usual to insert in the *reddendum*, these words, "over and above the yearly rent and arrears of the premises payable thereout to the King," but the insertion of these words seems to arise either from confounding the *custodiams* granted upon these *levaris*, with those granted upon seizures for arrears of the King's rents, or from a caution lest the lands should be subject to a crown or quit rent.

But

But in England, by the stat. of 33 Hen. VIII. 39 a bond to the King is in the nature of a statute staple, and the Crown may issue an * immediate extent upon it, at any time within a year after the bond was given. But if it be doubtful whether the condition be forfeited, or if it be prosecuted after a year, a *scire facias* issues. But the crown may, even in such cases, have an immediate extent, upon an affidavit made before a Baron, that the King's debt is in danger.

Bonds to the Crown in England in nature of statutes staple, and immediate extents go.

If goods be seized, and the extent returned, the court will, upon motion of the solicitor for the Crown, award a writ of † *venditioni exponas* to sell them. But Lord Chief Baron Gilbert says, that in England, on return of the extent, a rule of six days is to be given; and if the defendant do not appear at that time, then a *venditioni exponas* is issued; but that if he appear and plead, a further rule of four days is given.

Venditioni exponas, when to issue.

If two extents issue against a person bearing different *testes*, and be delivered to the sheriff, and that which bears the latest *teste* be delivered first to him, he should take an inquisition on that which bears the earliest *teste*, and make the common return upon it, viz. that he had seized the goods found into the hands of the King; and the same goods being found by the second inquisition, to

If two extents issue inquisition should be held on that of the first *teste*.

* It is said that those immediate extents have been formerly, upon particular occasions, issued in this kingdom; but as they are founded, as has been already mentioned, upon the 33 Hen. VIII. Eng. the legality of such proceeding here may be justly questioned.

† In England, terms for years are sold by *venditioni exponas*, upon extents for the King's debts. Bunb. 105. But see Bunb. 71. where such writ was refused.

return

return upon that, that they were seized upon the first inquisition; otherwise, if he return upon both inquisitions, that he has seized the goods, a *venditioni exponas* might issue upon each, and he may be liable to be charged with both. Bunb. 323.

King's debt
prior on re-
cord binds the
lands of the
debtor.
Gilb. Exc. 19.

As to the second particular, viz. Of the King's precedence in executions. If the King's debt be prior on record, it binds the land of the debtor into whose hands soever it come; because it is in the nature of a feudal charge on the land itself, and therefore must subject every body that claims under it. But if the land were alien'd in the whole, or in part, as by granting a jointure, before the debt contracted, such alienee claims prior to the charge, and therefore is not subjected to it.

But if the sub-
ject's debt on
record be pri-
or, the King's
extent shall be
preferred, un-
less it be after
a *liberate*,
ibid.

But if the subject's debt be by judgment or recognizance, and prior to the King's debt, and the King extend the lands first, the subject shall not by any after extent take them out of his hands: But if such judgment be extended, and possession delivered to him by a *liberate*, he shall hold it discharged from the King's debt. But if the King's extent come before the possession by *liberate*, the King's extent shall be preferred, and the subject wait till the King's debt be satisfied.

The reason of
the difference.
ibid.

The reason of the difference is, because the King's debt is in the nature of a feudal charge, which, if it come on the lands before the property of them is altered, seizes them as it might have done for the original service at first imposed; but if there had been a lawful alienation before such debt, there it is not the feud of the tenant, and therefore such charge cannot affect it; therefore if there was a precedent judgment or recognizance and a *liberate* pursuant

pursuant, before the King's extent comes down, there it cannot charge the lands, for the property is completely altered by the extent of the subject, which relates to the time that the judgment was first given, or recognizance acknowledged, and is only an execution of it; but if the King's extent had come before the *liberate*, he had charged the land whilst it was in the hand of his debtor, and then his charge would be satisfied, as if it had been in the first feudal donation. And the lien upon lands by the subject's debt came in by the stat. of West. 1. for before that the judgment did not bind the land; but the King's debt bound the land before that statute, and the statute does not touch the prerogative; and therefore the King has a power to levy upon the lands, notwithstanding the preceding lien by judgment; and therefore may seize lands that are bound by a preceding judgment, whilst the lands are in custody of the law on the *elegit*, and before the possession is actually delivered to the creditor, as a satisfaction for his debt.

If A obtain judgment against B, and B afterward enfeoff C of his land, and then A assigns his judgment to the King, in this case the King shall extend but a moiety of the lands in the hands of C. But if A had assigned the judgment to the King, before B had enfeoffed C, the whole lands had been liable; for the King by his prerogative could extend all the lands of the debtor for his debt; but the feoffment being made to C, before the assignment of the judgment to the King, they were the lands of C before B became indebted to the King, and therefore the prerogative of the King, which makes it a feudal charge, never affected those lands, but they are subject to the same lien only to which they were when it was only a debt due to A.
3 Leon. 239. 4 Leon. 10.

In what case
the King shall
extend but a
moiety.
Gilb. Exc. 94.

A executed

Where the
King's debt
shall not be
preferred.

A executed a bond to B, and C afterwards obtained two judgments of the same term against A, and B assigned his debt to the King; C took out two *elegits* upon his judgments, and extended both moieties of A's lands; and then process issued out of the Exchequer for the debt assigned to the King; and the question was whether the King's debt should be preferred in this case, and it was determined that it should not. But the reasons upon which the determination was founded don't appear clearly from the reporter. One reason assigned is, that the King's debt shall be preferred when it is in equal degree, otherwise not. But this is a distinction that does not seem to hold universally. Another reason which seems a better one is, that the subject's title was prior to the King's, and executed. But it was likewise said that the 33 Hen. VIII. c. 39. which enacts "that the King's suit shall be preferred before any person's, and that he shall have execution before any person; so that his suit be commenced before the other person's," abridged the prerogative in this respect. Hard. 23, &c.

The King's
execution
binds goods
from the *teste*.

As to the King's execution of goods, it relates to the time of awarding thereof, which is the *teste* of the writ, as it was in the case of a common person before the statute of 29 Car. II. c. 3. Eng. and 7 Will. III. c. 12. Irish. For though by that statute no execution shall bind the property of goods but from the time of the delivery of the writ to the sheriff. Yet, as this act does not extend to the King, an extent of a later * *teste* supercedes an execution of the goods by a former writ.

* Bunb. 39, admitted, per curiam, that an extent binds from the *teste*. 2 Strange 980. S. P.

And

And therefore, where an extent issued upon a statute staple at the suit of a subject, and the sheriff seized the conusor's goods, and after the day of the return, but before an actual return, and before a *liberate*, a prerogative writ issued against the conusor for a debt due to the King, it was preferred. Dyer 67. b. 2. Ro. ab. 158.

Though after an extent at the suit of the subject, no *liberate* being given.

But a sale of a chattel, *bona fide*, by the King's debtor shall bind the King, so that his extent shall not reach it in the hands of the alienee. 8 Co. 171.

But not if alien'd *bona fide*.

A *fieri facias*, tested 3d April, issued against a person, by virtue of which the sheriff levied the goods, &c. but before a sale, or the return of the writ, an extent came to the sheriff at the suit of the Crown to levy the goods of the debtor, bearing *teste* 2d May; the sheriff returned the special matter, on the *fieri facias*, and likewise upon the extent, in which it was said that the debtor was possessed of the goods upon 30th April; upon application to the court of Exchequer, he was obliged to amend his return, tho' there had been an inquisition taken; and in this case it was taken for granted that tho' the goods were levied by virtue of the *fieri facias*, three days before the *teste* of the extent, yet that was no bar to the Crown. But the reporter adds a quære, if they had been sold, because then execution had been executed. Bunb. 8.

An extent will bind goods seized upon a *fieri facias*, but not sold.

An extent having issued against a tenant, the landlord distrain'd for rent; the next day the extent was executed, and the inquisition found the goods then in the possession of the tenant; it was moved that the landlord might have the benefit of the stat. of 8 Ann. for his rent, notwithstanding

An extent will take place of a landlord's remedy under stat. of 8 Ann. Eng.

R r

standing

standing this extent; but it was denied by the court. Bunb. 269.

Goods distrained but not sold liable to the King's extent, otherwise of goods pawned.

Upon a demurrer by the Attorney general to a plea to an inquisition upon an extent, the question was, whether the goods in the inquisition were legally seized into the King's hands, having been two days before distrain'd for rent, but not sold. And it was determined by the court of Exchequer that they were, for that by the distress they are in the custody of the law, and the property of them is not altered; and till an alteration of the property they are liable to an extent at the suit of the Crown. But it was admitted that it would be otherwise of goods pawn'd before the *teste* of the extent, because the pawning is an alteration of the property. 2 Vesey 288.

Extent being tested on the same day as an assignment by commissioners of bankruptcy shall be preferred.

So where a man being indebted to the King by bond, an extent issued against him, and an inquisition found him possessed of goods; a third person pleaded that a commission of bankruptcy had issued against him, that the goods were seized by virtue of a warrant from the commissioners, and that the commissioners had assigned to the assignees, on the day of the *teste* of the extent; on demurrer, judgment was given for the King; because the extent and assignment being on the same day the extent is to be preferred. Trem. P. C. 637. 2 Show. 481. Bunb. 33.

The goods of a collector of the land tax seized by the commissioners liable to the King's debt in preference to the assignees under a commission of bankruptcy issued against him.

The collector of the land tax being indebted to the commissioners of the land tax, and having become a bankrupt, they by virtue of a power given them by act of parliament issued their warrant, by which his goods were seized, and an assignment was in three days afterwards made of his effects by the commissioners; and on an action of trover brought by the assignees, it was held by lord Hardwicke

Hardwicke and the court of King's-bench, that the collector was to be considered as the King's servant, and indebted to him, it being the King's money that he collected, and the allowance to him being made by the King; and that tho' the warrant was not to be considered as equal to an extent, so as to bind the goods from the date, yet that until an assignment the property was in the bankrupt, and the crown's hands were upon the goods, and created a lien before the assignment; and that the Crown was not bound by the acts relating to bankruptcy, not being named; and that upon this seizure all the right which the assignees had was to redeem the goods upon payment of the money, they being a pledge in the hands of the commissioners for that purpose. 2 Strange 978.

A deputy post-master became indebted to the Crown, and an extent issued against him; he afterwards became a bankrupt, and the assignees under the commission obtained an order, that on payment of what was due upon his bond, the extent should be discharged: upon motion to discharge the order, it appeared by affidavit that the bankrupt had promised also to discharge a debt due from his father (who was also deputy post-master and was since dead) to the Crown, and for which a *diem clausit extremum* had issued, and therefore it was held by the court that the assignees who stood in his place ought not to have the benefit of this order, unless they would pay both debts pursuant to his promise. Bunb. 337.

Assignees of bankruptcy not relieved against an extent, but on paying a debt due to the Crown by the bankrupt's father, which he had promised to pay.

It has been already observed that if the King's debtor died, his debt was to be preferred in payment: But this must be understood, where the King's debt is on record; and therefore the King must be first satisfied debts by judgments, statutes, recognizances, fines or amerciaments,

Of the preference of the King's debts by executors.

in his courts of record; and it would be a *devastavit* in the executor to pay other debts before them. But debts due to the King, not of record, seem not necessary to be satisfied before debts due to other persons, where there is no notice given of the King's debt; as where money is due to the King for wood, tin, estrays, &c. or for amerciaments in a court baron or other court not of record. Comyn 438.

The King
might take an
assignment of
a debt due to
his debtor.
Gillb. Exc.
167.

As to the third particular, viz. of the King's prerogative with regard to the debtors of his debtors, it is to be observed that the King, by an ancient prerogative, could take from his debtors an assignment of any of their debts; which was not allowed in the case of a common person; because it would have promoted maintenance; but it was not presumed that the King would maintain an unjust suit.

Or extend
such debt in
aid of his debt.
Madox, 666.

And by another prerogative, if the King's debtor was unable to satisfy the King's debt out of his own chattels, the King could betake himself to any third person, who was indebted to his debtor, and recover of such third person the debt due from him, in order to get satisfaction of the debt due to the Crown; and upon such recovery had, such third person was acquitted against the King's debtor, and the King's debtor was acquitted against the King *de tanto*.

The King's
debtor might
have aid of
the Crown to
recover his
debts.
Madox 668.

Likewise, by the ancient usage of the Exchequer, the King's debtors or accomptants were wont to have writs of aid, whereby to recover their debts of such persons as were indebted to them, in order to enable them to answer the debts they owed to the King.

And

And the King may likewise have extents against the debtor of the debtor of his debtor, and so on as far as debts can be found; because the second debtor, when his debt is seized, is a debtor to the King, since the King can seize a *chose in action*, and then the King may have an extent to seize the *chose in action* due to such second debtor. But see 4 Inst. 115.

King may have extents in aid *ad infinitum*.

But no obligation, recognizance, &c. for performance of covenants, though it be forfeited, or for any other matter than a debt due, can be assigned to the King by his debtor. 4 Inst. 115. 4 Leon. 9.

Bonds for performance of covenants.

And it is said that these assignments of debts to the King are not favoured in law, when the King's immediate debtor is able to pay the debt; for by the assignment at the King's suit, the body, lands and goods of the debtor to the King's debtor are liable to the King; whereas at the subject's suit, he could have had but his body, or goods, or half his lands. 4 Inst. 115. And see 2 Leon. 31. 4 Leon. 80.

Assignments of debts to the King not favoured.

When any debt is found by † inquisition, and seized into the King's hands, either at the prosecution of the King, or in aid of his debtor, process of *scire facias* is to be awarded against the party; which *scire facias* sets forth the original debt, and then sets forth the inquisition taken of the debt due to the King's debtor, by virtue of such extent in aid.

Scire facias to issue for such debts, and the form of it. Gilb. Exc. 177.

† Debts are not bound by the *teste* of the extent, but by the caption of the inquisition. Bunb. 265.

Proceedings
of this kind
rare here.

Proceedings of this nature are very rare here, though frequent in the Exchequer in England, where several rules have been made concerning them, to prevent abuses, which would be proper guides to follow here; for which see Gilb. Exc. 173.

Rules con-
cerning them
in England.

By those rules, he who assigns a debt is to take an oath that the debt assigned is a just and true debt, and has not been formerly put in suit in any other court; and that it is his own proper debt, originally due to him, *bona fide*, without any trust; and that he hath not received the same nor any part thereof, except &c.

And by another, he who desires any debt to be found by inquisition in his aid, is to take an oath that he is justly indebted to A, one of the farmers of the King's customs, and that the same is a just and due debt, originally due unto the said A, *bona fide*, without any manner of trust; and that B is justly indebted to him originally and *bona fide*, without trust; and that the said debt hath not been put in suit in any other court; and that he hath not received the same, and that C is much decay'd in his estate, so that unless a speedy course be taken against the said C the said debt is in danger of being lost.

And by another, no further process is to be taken for debts in aid, than to inquire and seize the lands, debts, and personal estate of him that is debtor to the King's debtor, or accomptant, unless it be by special order made in open court.

The

The reason of those rules, Lord Chief Baron Gilbert says, was because they made a state of the process; for many persons indebted to the King assigned their own debts to the King, in order to get immediate extents against their debtors; and therefore the court took care, that they should swear them to be just debts, and likewise that they should proceed no farther than an inquiry and seizure, and not to sell goods, without special order of court.

And the reason of them.

By another rule there, no debts without specialty shall be assigned to the King; otherwise in the case of debts in aid.

Other rules.

By another, no debts without specialty shall be found by inquisition for debts in aid, unless it be by order, upon motion in open court, and except it be for debts due to the King's farmers.

And by another, no immediate process of extent is to be awarded for debts in aid, but in cases of extremity, and upon oath to be taken, as aforesaid.

The reason of which is, because no debts can appear to the court to be due to the King's debtor, without a specialty; and the prerogative of the King should not be abused, by the assignment of simple contract debts before they are tried; but where such debts are found to be upon extents in aid, there they are recorded upon the oath of a jury; but the court will not let such extent in aid issue, before they are satisfied that they are just debts, and necessary to be got in by the King's debtor.

And the reason of them.

Sureties may have prerogative process against principal.

If the principal debtor to the King fail, and his sureties pay the debt, they shall have the prerogative process against the principal. Comyn 390.

But as these immediate extents do not seem to have been practised in those cases in this kingdom, it will be sufficient to refer to Hard. 404. Bunb. 58, 127, 221, 225, 300. Comyn 388. where several points are determined concerning the issuing them.

King's debtor obtaining a fraudulent extent in aid obliged to refund.

A farmer of excise having taken out an extent in aid against a debtor of his that had failed, by which means the other creditors of his debtor were defrauded, upon a bill brought against him in Chancery to be relieved, it appearing that he had sufficient estate of his own to satisfy the King's debt, he was decreed to refund. 1 Vern. 469.

But such matters are not examinable in the court of Chancery.

But in a later case, where one of the King's receivers took out an extent against himself, and had a simple contract debt due to himself found, and took out a *scire facias* against the executor of the simple contract debtor; and the executor brought his bill in Chancery to be relieved, suggesting that the proceedings were fraudulent, and on purpose to gain a preference of creditors in a superior degree, and that the receiver was able to pay the King's debt himself; the receiver pleaded the proceedings in the Exchequer in bar to the relief prayed, but confessed that he was able to pay the King's debt at the time of the extent; and the court allowed the plea. Prec. Cha. 47. *See 1. Anderson. 169.*

So

So where an extent in aid was taken out by a farmer of the hearth-money, against his own debtor, against whom a commission of bankruptcy had before issued, but before the assignment of his effects; and the assignees brought their bill in Chancery to be relieved against the extents; the bill was dismissed, for that the court of Chancery had no jurisdiction in these cases; and that any irregularities in the extents were properly examinable in the court of Exchequer, from whence they issued, Prec. Cha. 153. 2 Vern. 426.

C H A P. XXVII

OF THE SEVERAL REMEDIES FOR THE RECOVERY
OF THE KING'S RENTS.

THE remedies for the recovery of the King's rents are either I. by distress, II. by seizure, or III. by information.

The King
may distrain
for his rent,
on any lands
of his tenant.

And first, as to the remedy by distress; if the King has a rent service, rent charge, or rent seck, arising out of lands, he may distrain for it in all the other lands of his tenant, of whomsoever they be holden. 4 Inst. 119. 2 Inst. 132.

Whilst in the
possession of
his tenant.

But this is to be understood, where the lands so distrained are in the actual possession of the King's tenant, and not in the possession of his tenant for life, or years, or at will, *ibid*.

Tho' the rent
arise out of a
franchise, &c.
1 Will. 307.

And the King may reserve a rent out of a franchise or matter incorporeal, as well as out of lands, and may distrain on any other lands of the tenant for it.

The King
may distrain
the goods of
his under te-
nant off the
land.
1 Ro. ab. 670.
2 R. ab. 159.

If a man hold of the King by rent, and arrears incur, and the tenant make lease to another, the King may distrain the goods of the under-tenant for the arrears, in any place off the land holden.

By

By the stat. of 52 Hen. III. c. 15. Eng. it is declared that it shall be lawful to no man to take distress out of his fee, or in the high-way, nor in the common street, but only to the King or his officers, having special authority to do so.

And by the stat. of 28 Ed. I. c. 12. Eng. it is further provided, that all distresses which are to be taken for the King's debt shall not be made by beasts of the plough, so long as a man may find other; and that too great distresses shall not be taken for his debts, nor driven too far; and that if the debtor can find surety, until a day before the day limited to the sheriff, the distress shall be released in the mean time.

Distress for the King's debt not to be made by beasts of the plough, nor too great distress taken.

It is observed by Mr. Barrington in his observations upon the statute *de scaccario*, that at this time the sheriffs generally farmed the King's revenue, and consequently were guilty of those enormities and exactions which the farmers of the publick revenue have in all countries been justly charged with.

Great abuses committed by sheriffs, who farmed the revenue.

Replevin does not lie against the King, nor where the King is party, nor where the taking is in right of the King, and yet it is lawful in such case for the sheriff *primâ facie* to grant replevin, but when it is shewn that the King is party, or that the taking is in right of the King, there the sheriff shall cease. Br. repl. p. 33.

Replevin lies not against the King.

And Lord Chief Baron Gilbert assigns this reason; for that the distress for the King's debt is in the nature of a *levari*, which is a writ of execution; and that consequently

The reason why.

no replevin lies against the King, any more than it does for goods taken in execution at the suit of common persons.

Attachment
will be granted
against the
party so re-
plevying.

And in the case of a constable, who being fined by the commissioners of the land tax, and distrained, afterwards replevied, it was held by the court of Exchequer in England, that if there be a distress for any duty to the Crown, the person distrained cannot replevy; and that if he does, an attachment shall be granted against him for the contempt. Bunb. 14.

Or against the
sheriff.

And in the case of the King against sir Thomas Denny in this court, 28 May 1756, a distress being taken for an arrear of quit rent, alleged to be due to the Crown, by virtue of a warrant from the collector of the district, was replevied by the sheriff of the county, whereupon an attachment was awarded against the sheriff; although it was insisted that no rent was due at the time of the distress.

And in the case of the King against the sheriff of the county of Roscommon, &c. Easter term 1757, on a like application, an attachment was awarded, unless cause; but no further proceedings were had, the sheriff having made a proper submission.

The proper
remedy for
the party in
such case.

But if the party, whose goods are distrained for the King's debt, have any matter of relief to show, the usual method is to deposite the sum for which the distress is taken, and then to apply to the court by counsel, on affidavits of the facts; and if it appears to the court that the distress was taken improperly or unjustly, they will relieve the party, by ordering the sheriff or other officer of the Crown, by whom the distress was taken, to return
the

the money, or by attaching him, according to the circumstances of the case. See the case of the King against Lord Ikerrin Trin. 1746.

Secondly, as to the remedy by writ of seizure; heretofore where lands, out of which a rent was payable to the Crown, were returned as waste, the Crown was under great difficulty in the recovery of the rent; which being represented to government, on the 21st of February 1661, the following order was made, viz.

Writs of seizure.

Whereas several lands in Ireland, liable to pay his Majesty's new quit rents, are by the commissioners appointed for assessing the said lands returned waste, to the lessening that branch of his Majesty's revenue; which being made known to the lords justices and council, their lordships by their order of the † 22 February inst. did require and direct the Lord Chief Baron and the rest of the Barons of this court, to cause all such lands to be seized into his Majesty's hands, and disposed of for his advantage and benefit, until the quit rent with the arrears thereof be discharged, as by the said order remaining of record in the Lord Treasurer's remembrancer's office of this court appeareth; in pursuance whereof it is ordered by the court, that the said remembrancer do forthwith issue * seizures to the sheriffs of the respective counties of this kingdom

Rule of 21 Feb. 1661, as to such writs, where lands are returned waste.

† So in the original, but the date must be a mistake.

* It does not seem very clear, in what light these seizures are to be considered, or upon what legal authority they are founded; for an order of government solely cannot be deemed such. If they are to be considered as a prerogative process, in the nature of an immediate extent or *levari*, for the levying the debt due to the Crown, they seem not warranted by the laws of this kingdom; such process being, as has been shown in the last chapter, grounded on the stat. of 33 Hen. 8. 39. Eng. and even in England, it seems to be held that a *levari* ought not to issue for a fee farm

kingdom wherein such lands do lie, to seize the same into his Majesty's hands, returnable the next Easter term; and in order thereunto his Majesty's Auditor general is to return to the said remembrancer a full and perfect list of the lands so returned waste, to the end that his Majesty's revenue may the speedier be * performed.

And the constant usage hath been since, if a sufficient distress be not to be had, upon a proper affidavit of the fact, and upon a *constat* from the Auditor general of the charge upon the lands, and the arrear due, and upon counsel's motion thereon, for the Court to award a writ of seizure, without a *scire facias*, directed to the sheriff, to seize the lands.

Seizure of
incorporeal
thing.

So likewise if the arrear be out of the rent of a rectory, tithes, fair, ferry, fishery, or other incorporeal thing, of which there can be no distress, upon such *constat* and motion the court will grant a writ of seizure.

Constat of the
rent in lieu of
an office.

And the *constat* is deemed a sufficient finding of the King's title upon record to supply the want of an office, which in such cases has been held necessary to entitle the King.

Seizure where
distress is
rescued.

It has been doubted whether upon a rescue of a distress taken for the King's rent the court could grant a writ of seizure; but in Trin. term, 18 July, 1750, in the case of

farm rent; but that a distress is the proper remedy. Bunb. 348. If they are considered as a re-entry by the Crown, for a breach of condition, in non-payment of the rent, it may be questioned whether there should not be a previous inquisition finding the rent to be due. See 2 Inst. 206. Cr. El. 220, 855. Cr. Car. 100. Poph. 53. 5 Co. 56. b. 2. Ro. ab. 184, 215.

* So in the original.

the

the King against the lands of Clonbeg, it was determined that in such case a writ of seizure is a proper remedy to recover the arrear; for that where the distress is rescued the lands are in effect as waste; and it was likewise held that it is not necessary in such case to give notice to the tenants before the issuing the writ; for that the distress and rescue are a sufficient notice that the rent was due; and that if a conditional order were made, the punctuality and nicety required in serving it, and the opportunity given thereby to the parties to contest the service and the charge, would put the Crown to more expense than the value of the arrear; so that the King would lose by recovering his rents.

And the court will also in such case grant attachments against the persons committing the rescue; as was done 3d Feb. 1756, in the case of the King against the lands of Bonane in the county of Sligo.

And attachment.

The affidavit of the distress and rescue is generally made by the collector's driver, who is to swear that he was authorized and empowered by the collector to distrain the land; and this affidavit is to be filed in the second remembrancer's office.

Upon affidavit of the driver.

Formerly it was usual for the collectors of districts, by order from the commissioners of the revenue only, and without a writ of seizure, or any writ or process from the court, to seize rectories, tithes, &c. for arrears of Crown rent, and to set them to tenants. But by a rule made in this court, 4 Dec. 1711, it was declared that such practice was contrary to law, and the ancient and constant usage and course of the Exchequer: for that when any rectory, vicarage, or lands, are in arrear to the Crown, the commissioners

Rule of 4 Dec. 1711, restraining the commissioners from seizing, &c.

sioners cannot seize them, but must apply to the court of Exchequer in the usual manner, who thereon issue their seizure, directed to the sheriff of the county where the lands lie; on return of which the court grants a *custodiam* thereof to some person in trust for the Crown until the arrear be paid. And the court declared that the commissioners ought for the future to proceed on all such occasions according to the ancient usage of the Exchequer.

Attachment
to the sheriff,
and writ of
assistance to
aid the pur-
suivant.

In some special cases the court have directed the attachment to issue to the sheriff; as was done in two cases 21 Nov. 1688. And they will upon special application order a writ of assistance to issue to aid the pursuivant.

Proceedings
on the seizure
by inquisition,
custodiam,
and injunction.

Upon the writ of seizure, as upon a *levari facias*, the sheriff is to call a jury, and hold an inquiry, in order to find the lands, &c. and their value; which finding he is to return into this court, and also that he has seized the lands, &c. into his hands for his Majesty's use; upon which return and finding a *custodiam* is to be made out, and an injunction issued, as is mentioned in the last chapter.

Whether the
tenants in
possession
may be re-
moved by the
injunction.

And it is said that on this injunction the sheriff may remove and turn out every tenant on the lands, although they should have legal interests subsisting prior to the seizure; for that the King's seizure is in this case in the nature of a re-entry for the non-payment of the rent; and that the King comes in then by title paramount to all leases made by his tenant. However this power is rarely put in execution, and only in desperate cases; the usual method being to get an order for the tenants to pay their rents or set out their tithes as the case is.

And

And when the custodee of the Crown is put into possession of the lands, &c. he may set them to tenants during his interest therein, without any order or further power from the court whatsoever; and the usual method is by publick cant, from year to year, after publick notice given. But if they be set at an under value, or there be any improper methods used in setting them, the court upon proper application will relieve the party injured.

Custodee may set the lands, without further order.

If the proprietor of lands, or tithes taken in *custodiam* for the King's rent, apprehends that the Crown has been paid by the perception of the issues and profits, he may by his attorney pray the Court that it may be referred to the Second Remembrancer to audite and state the account on the *custodiam*, which the Court will order accordingly; and this order is to be served upon the custodee, and also upon the Solicitor for the King's rents, with a *summons* to attend upon the account.

Of accounting upon the *Custodiam* before the officer by order of the Court.

And the Second Remembrancer is to issue the summons, and thereby appoints the time and place for attending him, and the summons is to be served 24 hours at least before the hour of attendance; and the solicitor for the King is to file his charge, which is to contain the rent and arrears which were due to the Crown at the time the *custodiam* issued, as also the arrears since accrued; and the King's debtor, or the proprietor of the lands, &c. is to file his discharge, which usually contains the several payments which have been made to the custodee for the Crown since the possession was given to him, if the lands, &c. have been set to tenants; or if they have remained in

The summons.

The charge and discharge.

the possession of the custodee, then with what he hath received thereout or made thereof*.

The officer's
report and
the proceed-
ings thereon.

And when the account is finished, the officer is to draw up his report, and is to give the draft to the party praying the account, who is to serve it on the Solicitor for the King's rents, and to proceed to confirm the Report in like manner as upon an account in the Equity side of this Court.

Custodee be-
ing over paid
shall refund.

If it shall appear by the report that the custodee hath received more out of the lands than sufficient to answer the arrears due to the Crown, the Court will order him to refund the overplus.

Report ex-
parte on the
non-attend-
ance of the
solicitor for
the Crown.

If after three summonses have been served upon the solicitor for the King's rents, he still neglects to attend upon the account, the defendant's attorney may then get a certificate from the officer of his attendance, and may upon motion thereon obtain an order that the Crown Solicitor shall attend upon the next summons with effect, or that the officer do make up his report on the part of the defendant; and if upon service of this order and a fourth summons, the Solicitor yet makes default and neglects to attend, on affidavit of the service of the order and this last summons, the officer shall proceed and make up his report *ex parte*, which is to be proceeded on in like manner as if both parties had attended.

* If the proprietor on the account claims credit of the custodee for the full value of the lands or tithes, or for more than he has received, it is said that the custodee may avail himself of not being obliged to account for more than the extended value; but that if he only claims credit for the sums which have been actually paid to the custodee, the custodee may safely account in that manner, as he is not injured.

If the officer makes a special report, it is to be set down by the Second Remembrancer to be argued, and the Barons are to be furnished with copies of the report before the day of arguing it.

Special report
and the pro-
ceedings.

When the arrear for which the *Writ of Seizure* issued, and all arrears which have afterwards accrued, shall be discharged, the court will make a rule of course that the injunction shall be dissolved *.

Custodiam dis-
solved, how.

Thirdly, the King may have remedy by information in debt, in the name of his Attorney general, against the grantee or alienee of the land, or against his heir, or against an incumbent of a rectory, &c. for rent accrued during their time; as he may likewise against the Executor, &c. of the grantee, for arrears due in the time of the testator; or against the heir, if the Executor, &c. has

Of the re-
medy by in-
formation in-
debt.

* If any of these arrears have been before the Revolution (as is the case in several of the accounts in the Auditor general's office of the King's rents in the several districts of the kingdom, and which are sent out to the several collectors of the kingdom) it is to be observed, that by stat. 1. of Will. and Mary, Eng. the Protestants of Ireland are absolutely discharged and acquitted of and from the payment of all Crown, Composition, and Quit-rents, Hearth money, Twentieth parts, and all payments and other chief rents arising, or payable out of any houses, lands, tenements, hereditaments, rectories, tithes, or church livings, which had incurred from the 25th day of December 1688, until the kingdom should be declared to be reduced, and the war and rebellion there ended; and accordingly afterwards, by a proclamation dated at Kensington 3d day of March 1691-2, and in the 4th year of the said reign, it was declared, that the said kingdom was reduced to obedience and the war and rebellion ended.

And by another proclamation dated at Dublin the 7th day of July 1692, it was also declared, that all the subjects of this kingdom shall be exonerated from all arrears of Hearth money, and also of and from the half year's Quit-rent, which grew due from them, the Lady-day or Easter-day after the war had been declared to be ended.

not affets sufficient; and upon judgment obtained in such information, the Crown may have a *levari*.

Or English
bill.

Or an English information may be brought in the Equity side of the Exchequer, against the heir, executor, or administrator of the grantee or alienee, for rent incurred in the time of the ancestor; which is the more eligible method, because the Crown may thereby have a discovery of affets *.

* Having, in the exercise of the duty of my office, had frequent occasions to take the opinions of the most eminent counsel, as well in England as this kingdom, with regard to the proper methods of proceeding for the recovery of the King's rents, under different circumstances, and those opinions having received the sanction, from time to time, of judicial determinations by this Court, I apprehend it may not be useless to insert here an abstract of them.

And it was holden, that the cattle, &c. on the lands out of which the rent is due, in the hands of the heir of the grantee, may be distrained for rent due, as well in the time of his ancestor as in his own time; and that the cattle, &c. on other lands of the heir in his possession may be distrained for rent incurred in his own time. And that the same holds as to the alienee and his heir.

That where a distress is to be taken on other lands of the King's tenant, than those which are charged with the rent by the grant, and in another district, in such case, as the collectors are confined to their several districts, so that the collector of that where the lands charged lie cannot distrain the other lands, nor the collector of that where the latter lie cannot distrain for rent not given in charge to him, it is proper that the Commissioners of the Revenue do give a special authority for the purpose to the collector of the district where the distress is to be made.

That where the King grants a rectory or tithes to a bishop and his successors, in trust for the incumbents having cure of souls in his diocese, the King may distrain the cattle of the incumbent in any lands in his actual possession (though no part of the glebe land, or any land belonging to the rectory) for any rent which became due during his incumbency, but not for any arrear which accrued in the time of his predecessor; but that the glebe lands may be distrained for the arrears due in the time of his predecessor.

That where a grant is made by the Crown of *impropriate* or *appropriate* tithes, under the Act of Settlement, to a bishop and his successors, to the use of the incumbent and his successors, "the bishop, &c. to permit the incumbents to take the tithes,

tithes, &c. the incumbents, &c. from time to time indemnifying the bishops," by which words it should seem to be the intention of the grant, that the bishop should be liable, yet as the Act of Settlement (ante 207) vests the tithes in the incumbents, and the rents are reserved from and payable by the incumbents, who should therefore be considered in construction of law as having those tithes, and as falling under the description of the *levari*, which mentions such lands, &c. as the debtor had, &c. (Godb. 294); and as there is a clear remedy against the incumbent, no attempt, should be made to recover the rent from the bishop.

In the year 1762 several large arrears of Crown rent for fifty years and upwards having grown due out of several rectories and tithes, and especially in the county of Dublin, of which there did not appear any grants from the Crown nor any evidence of the title of the Crown thereto, except the ancient rent-rolls, and the Act of Settlement, by which all forfeited rectories and tithes are vested in the incumbents having cure of souls; in this case it was agreed by those opinions:

1. That if the rectory appeared to be *impropriate* or *appropriate* such rent-rolls will be good evidence of the Crown rent anciently reserved.

2. That these rent-rolls, considering the length of time since any rent was paid to the Crown, would not be sufficient evidence in themselves to support the title of the Crown, especially as there are other circumstances the proof of which, or some of them, might be expected, as that the rectory was *impropriate* before 1641, that it was seized and sequestered during the time of that rebellion; the attainder of the proprietor, &c.

